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TITLE 12

LAW ENFORCEMENT, EMERGENCY MANAGEMENT, AND MILITARY AFFAIRS

(CHAPTERS 60-87 IN VOLUME 8B)

SUBTITLE 2. LAW ENFORCEMENT AGENCIES AND PROGRAMS

CHAPTER.

SUBTITLE 3. CORRECTIONAL FACILITIES AND PROGRAMS

CHAPTER.

SUBTITLE 2. LAW ENFORCEMENT AGENCIES AND PROGRAMS

CHAPTER 8

DEPARTMENT OF ARKANSAS STATE POLICE

SUBCHAPTER.

Subchapter 1 — General Provisions

SECTION.

12-8-104. Director.

(a)(1)(A) After conferring with the members of the Arkansas State Police Commission, the Governor shall appoint a Director of the Department of Arkansas State Police who shall be the executive and administrative head of the Department of Arkansas State Police and shall receive a salary as fixed by law.

(B) The Director of the Department of Arkansas State Police shall serve at the pleasure of the Governor.

(2) The Director of the Department of Arkansas State Police shall be of good moral character and a resident and a qualified elector of the State of Arkansas.

(3) In addition to all other qualifications contained in this section, the Director of the Department of Arkansas State Police, at the time of appointment to the position of Director of the Department of Arkansas State Police, shall either:

(A) Be a college graduate with at least a bachelor's degree in criminology, business administration, or a related field;

(B) Have graduated from a standard high school or vocational school and have eight (8) years' previous experience in law enforcement or a related field with considerable supervisory and administrative experience; or

(C) Have at least ten (10) years' experience in law enforcement.

(b) The Director of the Department of Arkansas State Police shall determine the number of other officers and patrol personnel to be employed by the Department of Arkansas State Police, and they shall be paid salaries according to rank, not exceeding the salaries provided.

(c) The Director of the Department of Arkansas State Police shall promulgate such rules as are necessary for the efficient operation of the Department of Arkansas State Police and for the enforcement of such duties as are prescribed in this chapter.

(d) The Director of the Department of Arkansas State Police shall keep the books and records of the Department of Arkansas State Police, which shall be audited as the books and accounts of other state departments.

(e) An annual report to the Governor and a biannual report to the General Assembly showing the activities, number of arrests, amounts collected by the Department of Arkansas State Police, and disposition of all cases shall be made by the Director of the Department of Arkansas State Police.

(f)(1) The Director of the Department of Arkansas State Police shall have supervision and control for the purpose of discipline and proper management of all the members and employees of the Department of Arkansas State Police.

(2)(A) The Director of the Department of Arkansas State Police may designate that some or all employees of the Department of Arkansas State Police be trained pursuant to a memorandum of understanding between the State of Arkansas and the United States Department of

Justice or the United States Department of Homeland Security concerning the enforcement of federal immigration laws on federal and interstate highways in the State of Arkansas.

(B) The amount spent for training employees of the Department of Arkansas State Police under the memorandum of understanding between the State of Arkansas and the United States Department of Justice or the United States Department of Homeland Security shall be paid in accordance with the provisions of § 12-8-118.

(3)(A) Upon request of the Director of State Highways and Transportation, the Director of the Department of Arkansas State Police may designate certified law enforcement officers from the Arkansas Highway Police Division of the Arkansas State Highway and Transportation Department to be trained under the terms of the memorandum of understanding described in subdivision (f)(2) of this section.

(B) The amount spent for training certified law enforcement officers from the Arkansas Highway Police Division of the Arkansas State Highway and Transportation Department shall be borne by the Arkansas State Highway and Transportation Department.

(g) The Director of the Department of Arkansas State Police may establish such divisions within the ranks of the Department of Arkansas State Police as he or she may deem necessary and proper.

(h) Whenever in the Director of the Department of Arkansas State Police's discretion the action is necessary for the efficient operation of the Department of Arkansas State Police, the Director of the Department of Arkansas State Police may:

(1) Transfer, assign, and reassign from one (1) division to another division any member of the Department of Arkansas State Police or other employee of the Department of Arkansas State Police; or

(2)(A) Subject to the approval of the commission, promote or demote in rank any member of the Department of Arkansas State Police.

(B) However, any demotion pursuant to subdivision (h)(2)(A) of this section shall be for nondisciplinary reasons.

(i) Due to the exacting and special duties of the Director of the Department of Arkansas State Police, he or she may draw an expense allowance in an amount not to exceed six hundred dollars ($600) per month.

(j)(1) Subject to the provisions of subsection (f) of this section, the Director of the Department of Arkansas State Police may negotiate the terms of a memorandum of understanding between the State of Arkansas and the United States Department of Justice or the United States Department of Homeland Security concerning the enforcement of federal immigration laws.

(2)(A) The memorandum of understanding described in subdivision (j)(1) of this section must be signed on behalf of the State of Arkansas by the Director of the Department of Arkansas State Police, the Governor, and the Director of Law Enforcement Standards and Training.

(B) Prior to the signing provided for by subdivision (j)(2)(A) of this section, the memorandum of understanding shall be reviewed by the Legislative Council.

(k) The Director of the Department of Arkansas State Police shall implement or assist other entities to develop and implement a public service campaign concerning racial profiling and may utilize brochures, flyers, or public service announcements.

History. Acts 1945, No. 231, §§ 4, 14, 21; 1968 (1st Ex. Sess.), No. 65, § 1; A.S.A. 1947, §§ 42-404, 42-414, 42-421; Acts 1987, No. 1037, § 13; 1989 (1st Ex. Sess.), No. 285, § 11; 2001, No. 750, § 1; 2001, No. 1697, § 2; 2005, No. 665, § 1; 2005, No. 907, § 1; 2005, No. 2136, § 2; 2007, No. 1048, § 1; 2011, No. 779, § 1.

Amendments. The 2011 amendment substituted "promulgate such rules" for "promote such rules and regulations" in (c).

12-8-106. Department of Arkansas State Police — Duties and powers — Restrictions — Municipal police barred from patrolling certain highways.

(a)(1) It shall be the duty of the Department of Arkansas State Police to:

(A) Patrol the public highways, make arrests, and enforce the laws of this state relating to motor vehicles and the use of the state highways;

(B) Establish, maintain, and enforce a towing rotation list to assist in clearing highways of motor vehicles which have been involved in accidents or abandoned;

(C) Assist in the collection of delinquent motor vehicle license taxes and the collection of gasoline and other taxes that are required by law; and

(D) Determine when, if possible, a person or persons are the cause of injury to any state highway or other state property and arrest all persons criminally responsible for injury to any state highway or other state property and bring them before the proper officer for trial.

(2) The Director of the Department of Arkansas State Police may promulgate necessary rules and regulations to carry out the purpose and intent of subdivision (a)(1)(B) of this section.

(b) The department shall be conservators of the peace and as such shall have the powers possessed by police officers in cities and county sheriffs in counties, except that the department may exercise such powers anywhere in this state.

(c) The department shall have the authority to establish a Crimes Against Children Division, either through transfer or by contract, to conduct child abuse investigations, to administer the Child Abuse Hotline, and, when consistent with regulations promulgated by the department, to provide training and technical assistance to local law enforcement in conducting child abuse investigations.

(d) The police officers shall have all the power and authority of the State Fire Marshal and shall assist in making investigations of arson,

§ 5-38-301, and such other offenses as the director may direct and shall be subject to the call of the circuit courts of the state and the Governor.

(e) However, this chapter shall not be construed so as to take away any authority of the regularly constituted peace officers in the state, but the department shall cooperate with them in the enforcement of the criminal laws of the state and assist such officers either in the enforcement of the law or apprehension of criminals.

(f) Nothing in this chapter shall be construed as to authorize any officer of the department to serve writs unless they are specifically directed to the department, or an officer thereof, by the issuing authority.

(g) No officer or member of the department shall ever be used in performing police duties on private property in connection with any strike, lockout, or other industrial disturbance.

(h)(1)(A) The following law enforcement officers are prohibited from patrolling controlled-access facilities except as may be authorized by the director:

(i) A municipal police officer;

(ii) An officer established under § 14-42-401 et seq.;

(iii) A city marshal; and

(iv) A constable.

(B) The director may withdraw any previously issued authorization to patrol controlled-access facilities.

(C)(i) The director shall promulgate rules in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq., to establish criteria for granting or withdrawing authorization to patrol controlled-access facilities.

(ii) In adopting the rules described in subdivision (h)(1)(C)(i) of this section, the director at a minimum shall take into consideration the following factors:

(a) Public safety;

(b) Training of the law enforcement officers;

(c) Size of the law enforcement agency;

(d) Financial impact;

(e) Abuse of police power; and

(f) The types of roadways or highways that are controlled-access facilities for purposes of this section.

(2) The following law enforcement officers may patrol any service roads that are within their jurisdiction situated adjacent to controlled-access facilities:

(A) A municipal police officer;

(B) An officer established under § 14-42-401 et seq.;

(C) A city marshal; and

(D) A constable.

(3) This subsection shall not prohibit a municipal police officer, an officer established under § 14-42-401 et seq., a city marshal, or a constable from responding to an accident or other emergency on a controlled-access facility.

History. Acts 1945, No. 231, §§ 7, 8; 1963, No. 133, § 1; A.S.A. 1947, §§ 42-407, 42-408; Acts 1987, No. 509, § 1; 1997, No. 1240, § 7; 2001, No. 254, § 1; 2001, No. 441, § 1; 2001, No. 1697, § 4; 2007, No. 371, § 1; 2011, No. 741, § 1.

Amendments. The 2011 amendment substituted "The following law enforcement officers" for "Municipal police" in the introductory paragraph of (h)(1)(A); inserted (h)(1)(A)(i) through (iv); deleted "for municipal police" following "authorization" in (h)(1)(B) and (h)(1)(C)(i); substituted "law enforcement officers" for "municipal police" in (h)(1)(C)(ii)(*b*); substituted "law enforcement agency" for "municipal police force" in (h)(1)(C)(ii)(*c*); substituted "The following law enforcement officers" for "Municipal police" in the introductory paragraph of (h)(2); inserted (h)(2)(A) through (D); and inserted "an officer established under § 14-42-401 et seq., a city marshal, or a constable" in (h)(3).

CASE NOTES

Extraterritorial Authority.

Evidence obtained in a stop of defendant's vehicle for speeding on the interstate should have been suppressed because, pursuant to subdivision (h)(2) of this section, a municipal police department did not have the authority to make a selective-traffic enforcement type of traffic stop on the interstate. McKim v. State, 2009 Ark. App. 834, — S.W.3d — (2009).

12-8-125. Small Municipality Law Enforcement Vehicle Grant Program.

(a) There is created the "Small Municipality Law Enforcement Vehicle Grant Program", to be administered by the Department of Arkansas State Police with funding from the General Improvement Fund or its successor fund or fund accounts.

(b)(1) The program may provide grants to cities of the second class as determined under § 14-37-103 or incorporated towns as determined under § 14-37-103 for the purpose of purchasing used vehicles from the Marketing and Redistribution Section of the Department of Finance and Administration.

(2) Vehicles purchased under subdivision (b)(1) of this section shall be used by law enforcement agencies of the city of the second class or incorporated town receiving the grant.

(c)(1) The Department of Arkansas State Police shall promulgate rules necessary for the implementation of the program.

(2) The rules shall include:

(A) The procedure for making an application for a grant;

(B) The selection criteria for a grant;

(C) The limitations on use of grant money; and

(D) A procedure to provide for accountability of grant recipients.

(d) A city of the second class or incorporated town shall not be required to provide matching funds to receive a grant under this section.

(e) If the Department of Arkansas State Police awards a grant to a city of the second class or incorporated town under this section, the Department of Arkansas State Police shall pay the grant funds for the purchase of a used vehicle directly to the Marketing and Redistribution Section of the Department of Finance and Administration.

(f) Funds from a grant received under this section shall not be used to pay sales tax for a used vehicle purchased from the Marketing and Redistribution Section of the Department of Finance and Administration.

(g) The awarding of grants under this section is contingent on the appropriation and availability of funding for the program.

History. Acts 2011, No. 1237, § 1.

Subchapter 2 — Police Officers

SECTION.

A.C.R.C. Notes. Acts 2011, No. 1104, § 21, provided: "FLAGS. The Department of Arkansas State Police is hereby authorized to award one (1) United States flag to the family of any Arkansas State Police Commissioned Officer killed in the line of duty. This provision will be effective for Arkansas State Police Commissioned Officers killed in the line of duty after July 1, 2011.

"The provisions of this section shall be in effect only from July 1, 2011 to June 30, 2012."

12-8-203. Probationary period.

(a)(1) Each person who is selected as a police officer of the Department of Arkansas State Police shall be a probationer for a period of eighteen (18) months from his or her date of hire.

(2) A probationer may be discharged by the Director of the Department of Arkansas State Police with the approval of the Arkansas State Police Commission with or without cause.

(b) The probationary period shall not apply to a person who has already served a probationary period.

History. Acts 1945, No. 231, § 6; 1981, No. 700, § 1; A.S.A. 1947, § 42-406; Acts 2001, No. 1697, § 11; 2003, No. 1041, § 1; 2005, No. 667, § 1; 2011, No. 14, § 1.

A.C.R.C. Notes. Acts 2011, No. 14, § 2, provided: "This act does not apply to a police officer of the Department of Arkansas State Police serving a probationary period on the effective date of this act."

Amendments. The 2011 amendment, in (a)(1), substituted "police officer" for "member" and "eighteen (18) months" for "one (1) year."

12-8-210. Insurance — Medical and hospital.

A.C.R.C. Notes. Acts 2011, No. 1104, § 19, provided: "UNIFORM EMPLOYEE HEALTH INSURANCE PROGRAM REPORTING. The Department of Arkansas State Police shall report monthly to the Governor, the Chief Fiscal Officer of the State and to the Arkansas Legislative Council or Joint Budget Committee regarding the activity and condition for the uniformed employee health insurance plan. The report shall include, but not limited to, the beginning reserve fund

balance, contributions made during the month, claims paid, and the ending fund balance of the month. In the event it is determined that the cost to adequately maintain the uniform employee health insurance plan is not feasible within the existing resources available to the department, the 88th General Assembly shall study the feasibility and desirability of discontinuing the self-insurance program and instead provide medical and hospital insurance to uniform employees through the public employees insurance program.

"The provisions of this section shall be in effect only from July 1, 2011 through June 30, 2012."

Subchapter 3 — Department of Arkansas State Police Communications Equipment Leasing Act

SECTION.
12-8-304. Construction — Applicability of other acts.

12-8-304. Construction — Applicability of other acts.

(a)(1) This subchapter shall be liberally construed to accomplish the intent and purposes of this subchapter and shall be the sole authority required for the accomplishment of these purposes.

(2) It shall not be necessary to comply with the general provisions of other laws dealing with public commodities and public facilities and their acquisition, construction, leasing, encumbering, or disposition if:

(A) The Arkansas State Police Commission shall comply with §§ 25-4-108 and 25-4-110 before acquiring any communications equipment authorized under this subchapter; and

(B) The commission submits any invitation or request for bids, quotes, or proposals and the procedures to be used in evaluating them to the State Procurement Director for review and written approval prior to any obligation being incurred by the commission or the Department of Arkansas State Police as the obligation relates to any acquisition authorized and defined by this subchapter.

(b) The enumeration of any object, purpose, power, manner, method, and thing in this subchapter shall not be deemed to exclude like or similar objects, purposes, powers, manners, methods, or things.

(c) To the extent that there is a conflict between the provisions of this subchapter and §§ 12-8-101 — 12-8-107, 12-8-110 — 12-8-112, 12-8-114 — 12-8-116, 12-8-118, 12-8-119, 12-8-201 — 12-8-205, 12-8-213, and 12-12-103, the provisions of this subchapter shall govern.

History. Acts 1985, No. 817, §§ 7, 10; A.S.A. 1947, §§ 42-474, 42-476; Acts 2005, No. 1962, § 24; 2011, No. 779, § 2.

Amendments. The 2011 amendment substituted "§§ 25-4-108 and 25-4-110" "for §§ 25-4-107 [repealed] and 25-4-108" in (a)(2)(A).

CHAPTER 9

LAW ENFORCEMENT OFFICER TRAINING AND STANDARDS

SUBCHAPTER.

Subchapter 1 — Commission and Advisory Board on Standards and Training

SECTION.

12-9-103. Commission created — Members — Meetings — Director.

(a) The Arkansas Commission on Law Enforcement Standards and Training shall consist of ten (10) members, to be appointed by the Governor with the advice and approval of the Senate.

(b)(1)(A) Two (2) members of the commission shall be chiefs of police of municipalities in Arkansas, two (2) members of the commission shall be county sheriffs of counties in this state, one (1) member shall be an officer of the Department of Arkansas State Police, two (2) members shall be appointed to represent the public, and one (1) member shall be an educator in the field of criminal justice.

(B) Each congressional district of the state shall be represented on the commission, with the remaining members to be appointed from the state at large.

(2)(A) One (1) member shall not be actively engaged in or retired from law enforcement.

(B) The member under subdivision (b)(2)(A) of this section shall be:

(i) Sixty (60) years of age and shall represent the elderly;

(ii) Appointed from the state at large subject to confirmation by the Senate; and

(iii) A full voting member.

(3) The person who is elected as president of the Arkansas Municipal Police Association or his or her designee shall be a full voting member of the commission.

(c) Members shall be appointed for terms of seven (7) years or until their successors are appointed and qualified.

(d) If a vacancy occurs on the commission due to death, resignation, or for other reason, the vacancy shall be filled by appointment by the Governor, in the same manner as provided for the initial appointment

for the position, for the remainder of the unexpired portion of the term thereof.

(e) Members of the commission shall serve without compensation but may receive expense reimbursement in accordance with § 25-16-901 et seq.

(f) The commission shall meet at such times as may be provided by the rules of the commission, or upon call of the chair, or upon written request of any four (4) members.

(g) Upon recommendation of the commission, the Governor shall appoint the Director of Law Enforcement Standards and Training, who shall perform such duties as may be directed by the commission and who shall serve at the pleasure of the Governor.

History. Acts 1981, No. 45, § 7; 1983, No. 131, §§ 1-3, 5; 1983, No. 135, §§ 1-3, 5; A.S.A. 1947, §§ 6-623 — 6-626, 42-701.1; Acts 1993, No. 109, § 1; 1997, No. 250, § 65; 2009, No. 205, § 1; 2011, No. 283, § 1.

Amendments. The 2011 amendment, in (b)(3), inserted "or his or her designee" and deleted "during his or her term of office as president of the association, and his or her successors shall likewise serve as full voting members of the commission" at the end; and deleted "Except for the president of the Arkansas Municipal Police Association" at the beginning of (c).

12-9-105. Employees.

The Arkansas Commission on Law Enforcement Standards and Training may employ such employees as are necessary to efficiently and effectively carry out this subchapter and as may be authorized by appropriations of the General Assembly.

History. Acts 1975, No. 452, § 7; A.S.A. 1947, § 42-1006; Acts 2011, No. 779, § 3.

Amendments. The 2011 amendment deleted "biennial" preceding "appropriations."

12-9-107. Training programs.

(a)(1) For the purpose of this subchapter, the Arkansas Commission on Law Enforcement Standards and Training may cooperate with federal, state, and local law enforcement agencies in establishing and conducting instruction and training programs for law enforcement officers of this state, its counties, and municipalities.

(2) Cooperation under subdivision (a)(1) of this section may include without limitation the use of any training facility, equipment, or personnel to conduct training or provide services for any law enforcement or public safety purpose.

(b) The commission shall establish and maintain police training programs through such agencies and institutions as the commission may deem appropriate to carry out the intent of this subchapter, including provision for training participants under twenty-one (21) years of age in the Arkansas Police Corps Scholarship Program.

(c) The commission shall work with each state agency and political subdivision that adheres to the selection and training standards

established by the commission to provide allowable tuition, living, and training expenses incurred by the officers in attendance at approved training programs.

(d)(1) It is the intent of this subchapter that the expenses of attending the approved training programs established under subsection (c) of this section shall be furnished by the state through the Arkansas Law Enforcement Training Academy or any other manner that may be prescribed by the commission, and no cost or charge shall be made to any local political subdivision for the actual cost of the training.

(2) The state shall not be liable for the travel cost or any salary in connection with attending any training program.

(3) The commission may accept reimbursement from any public or private entity for the use of its training facilities, equipment, or personnel during the providing of services.

(e) The expenses of attending training provided pursuant to a memorandum of understanding between the State of Arkansas and the United States Department of Justice or the United States Department of Homeland Security shall be paid in accordance with the provisions of § 12-8-104.

(f) The commission shall administer the training and certification program for court security officers under the Arkansas Court Security Act, § 16-10-1001 et seq.

(g)(1) Persons such as doctors, nurses, firefighters, first responders, or other medical personnel, persons engaged in homeland security, or persons otherwise engaged in assisting in the protection of public welfare and safety who are not law enforcement personnel may attend training or receive instruction at the invitation of the commission.

(2) The commission may assess a fee on a person invited to attend training or receive instruction under this subsection to reimburse the commission for costs associated with the training or instruction under this subsection.

History. Acts 1975, No. 452, § 9; A.S.A. 1947, § 42-1008; Acts 1997, No. 1203, § 4; 2005, No. 907, § 3; 2007, No. 576, § 2; 2011, No. 188, § 1.

Amendments. The 2011 amendment redesignated former (a) as present (a)(1) and inserted (a)(2); substituted "Arkansas Law Enforcement Training Academy" for "law enforcement training academy" in (d)(1); and inserted (d)(3), (g)(1) and (g)(2).

12-9-114. Training concerning sexual assaults.

CASE NOTES

Scope of Duty to Train.

This section did not impose a duty on a county to train its officers not to sexually assault detainees. First, the statute did not create a duty for the county to train its officers on the laws concerning sexual assault and instead mandated that the subject be included in basic training, and second, even if the statute did imply that the county had a duty to ensure its officers were trained on the laws concerning sexual assault, that obligation did not require that the county train its officers not to violate those laws, nor did it require

that officers be trained on which violations constituted felonies. Parrish v. Ball, 594 F.3d 993 (8th Cir. 2010).

12-9-116. Persons with disabilities training.

(a)(1) In accordance with the certification requirements of the Arkansas Commission on Law Enforcement Standards and Training for law enforcement officers, all law enforcement officers in the state shall complete additional continuing education and training as needed relating to persons with disabilities in a law enforcement context.

(2) Practicum training shall also be sufficient for the requirement under subdivision (a)(1) of this section.

(b) Training under subsection (a) of this section shall include without limitation:

(1) The dynamics of relating to a person with a disability;

(2) Interview techniques;

(3) Available supportive services; and

(4) Pro-arrest guidelines and drawbacks of dual arrest and practices to promote the safety of law enforcement officers.

History. Acts 2011, No. 1199, § 1.

Subchapter 2 — Law Enforcement Training Academy

12-9-206. Expenses furnished by academy — Exceptions.

(a) The Arkansas Law Enforcement Training Academy shall furnish, without cost to applicants, the necessary food, lodging, laundry, and other necessary expenses while attending the academy.

(b)(1) However, the salary of applicants and the necessary transportation cost in traveling to and from the academy shall be paid by the municipality or county in which employed.

(2) The travel expenses of a constable in attending the academy may be paid by the county.

History. Acts 1963, No. 526, § 5; A.S.A. 1947, § 42-705; Acts 2011, No. 561, § 1.

Amendments. The 2011 amendment substituted "may" for "shall" in (b)(2).

12-9-210. Designated law enforcement agencies.

(a) The Arkansas Law Enforcement Training Academy and the Black River Technical College Law Enforcement Training Academy are designated as law enforcement agencies.

(b) The primary role of the Arkansas Law Enforcement Training Academy and the Black River Technical College Law Enforcement Training Academy is to conduct law enforcement training.

History. Acts 2011, No. 272, § 1.

Subchapter 4 — Radar Instructors and Operators

12-9-402. Powers and duties of the commission.

In addition to the powers conferred upon the Arkansas Commission on Law Enforcement Standards and Training in §§ 12-9-104 — 12-9-107, the commission shall have power to:

(1) Promulgate rules and regulations for the administration of this subchapter;

(2) Require the submission of reports and information by law enforcement agencies within this state;

(3) Establish minimum selection and training standards for appointment as a police traffic radar operator and police traffic radar instructor. The standards may take into account different requirements for urban and rural areas;

(4) Establish minimum curriculum requirements for the basic radar operator's course, the basic radar instructor's course, and the refresher courses for the radar operators and the radar instructors;

(5) Consult and cooperate with counties, municipalities, agencies of this state, other governmental agencies, and with universities, colleges, junior colleges, community colleges, and other institutions or organizations concerning the development of police traffic radar training schools and programs or courses of instruction;

(6) Approve institutions and facilities to be used by or for the state or any political subdivision thereof for the specific purpose of training radar operators and radar instructors;

(7) Exclude part-time law enforcement officers and honorary law enforcement officers from training classes sponsored and supported by the Arkansas Law Enforcement Training Academy for the training of radar operators and radar instructors;

(8) Adopt rules and minimum standards for such schools and courses which shall include, but not be limited to, establishing minimum:

(A) Basic and refresher training requirements which police radar operators and police radar instructors must satisfactorily complete before being eligible for radar certification;

(B) Course attendance and equipment requirements; and

(C) Requirements for instructors;

(9) Conduct review of agency records to assist any department head in complying with the provisions of this subchapter;

(10) Adopt and amend bylaws, consistent with law, for its internal management and control; and

(11) Enter into contracts or do such things as may be necessary and incidental to the administration of this subchapter.

History. Acts 1983, No. 672, § 2; A.S.A. 1947, § 42-1011; Acts 2011, No. 1240, § 2.
Amendments. The 2011 amendment deleted "auxiliary law enforcement officers" following "Exclude" in (7).

12-9-403. Appointment and training.

(a) No person shall be appointed as a police traffic radar operator or police traffic radar instructor until the minimum standards for training requirements have been completed.

(b) The training requirements for police traffic radar operators or police traffic radar instructors shall be established by the Arkansas Commission on Law Enforcement Standards and Training.

(c) The commission may issue a certificate evidencing satisfactory completion of the requirements of this subchapter when evidence is submitted by the law enforcement agency director, chief, or county sheriff that the police traffic radar operator has met the training requirements.

(d) Nothing in this section shall be construed to preclude any law enforcement agency from establishing qualifications and standards for appointing and training of police traffic radar operators and police traffic radar instructors that exceed those set by this subchapter or by the commission.

(e) Any police traffic radar operator or police traffic radar instructor failing to meet the training requirements as set forth in this subchapter shall lose his or her authority to operate a police traffic radar for enforcement purposes.

(f) A law enforcement officer shall complete the commission-required training for officer certification before being eligible for certification as a police traffic radar operator.

(g) Only a full-time law enforcement officer, part-time I law enforcement officer, part-time II law enforcement officer, or an auxiliary law enforcement officer appointed as a reserve law enforcement officer as defined by commission rule is eligible for certification as a police traffic radar operator.

History. Acts 1983, No. 672, § 4; A.S.A. 1947, § 42-1013; Acts 1997, No. 734, § 1; 2005, No. 1962, § 28; 2011, No. 1240, § 3.
Amendments. The 2011 amendment, in (g), inserted "or an auxiliary law enforcement officer appointed as a reserve law enforcement officer" and substituted "rule is" for "regulation, will be."

CHAPTER 10

COMMUNICATIONS SYSTEMS

SUBCHAPTER.
3. Arkansas Public Safety Communications Act of 1985.

Subchapter 3 — Arkansas Public Safety Communications Act of 1985

12-10-318. Emergency telephone service charges — Imposition — Liability.

(a)(1)(A) When so authorized by a majority of the persons voting within the political subdivision in accordance with the law, the governing authority of each political subdivision may levy an emergency telephone service charge in the amount assessed by the political subdivision on a per-access-line basis as of January 1, 1997, or the amount up to five percent (5%) of the tariff rate, except that any political subdivision with a population of fewer than twenty-seven thousand five hundred (27,500) according to the 1990 Federal Decennial Census may, by a majority vote of the electors voting on the issue, levy an emergency telephone charge in an amount assessed by the political subdivision on a per-access-line basis as of January 1, 1997, or an amount up to twelve percent (12%) of the tariff rate.

(B) The governing authority of a political subdivision that has been authorized under subdivision (a)(1)(A) of this section to levy an emergency telephone service charge in an amount up to twelve percent (12%) of the tariff rate may decrease the percentage rate to not less than four percent (4%) of the tariff rate for those telephone service users that are served by a telephone company with fewer than two hundred (200) access lines in this state as of the date of the election conducted under subdivision (a)(1)(A) of this section.

(2) Upon its own initiative, the governing authority of the political subdivision may call such a special election to be held in accordance with § 7-11-201 et seq.

(b)(1)(A)(i) There is levied a commercial mobile radio service emergency telephone service charge in an amount of sixty-five cents (65¢) per month per commercial mobile radio service connection that has a place of primary use within the State of Arkansas.

(ii)*(a)* A commercial mobile radio service provider may determine, bill, collect, and retain an additional amount to reimburse the commercial mobile radio service provider for enabling and providing 911 and enhanced 911 services and capability in the network and for the facilities and associated equipment.

(b) The commercial mobile radio service provider may add any amounts implemented under this subdivision (b)(1)(A)(ii) to the sixty-five cents (65¢) levied in subdivision (b)(1)(A)(i) of this section so that the commercial mobile radio service emergency telephone service charges appear as a single line item on a subscriber's bill.

(B)(i) There is levied a service charge of sixty-five cents (65¢) per month on prepaid wireless telephone service subscribers whose mobile set telephone numbers are assigned to the State of Arkansas.

(ii) Providers of prepaid wireless telephone service shall collect and remit the service charge under one (1) of the following methods:

(a) The CMRS provider shall collect on a monthly basis the sixty-five cents (65¢) service charge from each prepaid wireless telephone service customer whose account balance is equal to or greater than the amount of the service charge; or

(b) The CMRS provider shall divide the total earned prepaid wireless telephone service revenue received by the CMRS provider with respect to each prepaid wireless telephone service customer in the state within the monthly 911 reporting period by fifty dollars ($50.00) and multiply the quotient by the service charge amount.

(iii) In the case of prepaid wireless telephone service:

(a) The monthly wireless 911 surcharge imposed by this subdivision (b)(1)(B) shall be remitted based upon each prepaid wireless telephone associated with this state for each wireless service customer that has a sufficient positive balance as of the last day of each month;

(b) The surcharge shall be remitted in any manner consistent with the wireless provider's existing operating or technological abilities, such as customer address, location associated with the mobile telephone number, or reasonable allocation method based upon other comparable relevant data; and

(c)(1) If direct billing is not feasible, the prepaid subscriber's account may be reduced by the surcharge amount or an equivalent number of minutes.

(2) However, collection of the wireless 911 surcharge under this subdivision (b)(1)(B)(iii)(*c*) does not reduce the sales price for any tax collected at the point of sale.

(C) There is levied a voice over internet protocol emergency telephone service charge in an amount of sixty-five cents (65¢) per month per voice over internet protocol connection that has a place of primary use within the State of Arkansas.

(D) There is levied a nontraditional telephone service charge in an amount of sixty-five cents (65¢) per month per nontraditional service connection that has a place of primary use within the State of Arkansas.

(E) Except for prepaid wireless telephone service, the service charge levied in subdivision (b)(1)(A) of this section and any additional amounts implemented under subdivision (b)(1)(B) of this section and collected by commercial mobile radio service providers that provide mobile telecommunications services as defined by the Mobile Telecommunications Sourcing Act, Pub. L. No. 106-252, as in effect on January 1, 2001, shall be collected pursuant to the Mobile Telecommunications Sourcing Act.

(2)(A) The service charges collected under subdivision (b)(1)(A) of this section, less administrative fees under subdivision (c)(3) of this section, shall be remitted to the Arkansas Emergency Telephone Services Board within sixty (60) days after the end of the month in which the fees are collected.

(B) The funds collected pursuant to subdivision (b)(1)(A) of this section shall not be deemed revenues of the state and shall not be subject to appropriation by the General Assembly.

(c)(1) There is established the Arkansas Emergency Telephone Services Board, consisting of the following:

(A) The Auditor of State or his or her designated representative;

(B) Two (2) representatives selected by a majority of the commercial mobile radio service providers licensed to do business in the state; and

(C) Two (2) 911 system employees selected by a majority of the public safety answering point administrators in the state.

(2) The responsibilities of the board shall be as follows:

(A) To establish and maintain an interest-bearing account into which will be deposited revenues from the service charges levied under subdivision (b)(1)(A) of this section;

(B) To manage and disburse the funds from the account levied under subdivision (b)(1)(A) of this section in the following manner:

(i)*(a)* Not less than eighty-three and five-tenths percent (83.5%) of the total monthly revenues collected and remitted under subdivision (b)(1)(A) of this section shall be distributed on a population basis to each political subdivision operating a 911 public safety communications center that has the capability of receiving commercial mobile radio service 911 calls on dedicated 911 trunk lines for expenses incurred for the answering, routing, and proper disposition of 911 calls, including payroll costs, readiness costs, and training costs associated with wireless, voice over internet protocol, and nontraditional 911 calls.

(b) Each state fiscal year, one hundred twenty thousand dollars ($120,000) of the total monthly revenues collected and remitted under subdivision (c)(2)(B)(i)(*a*) of this section shall be transferred and deposited to the credit of the books of the Treasurer of State and the Auditor of State for the Miscellaneous Agencies Fund Account for the Arkansas Commission on Law Enforcement Standards and Training, to be used exclusively for training and all related costs under § 12-10-325;

(ii)*(a)* Not more than fifteen percent (15%) of the total monthly revenues collected and remitted under subdivision (b)(1)(A) of this section shall be held in the interest-bearing account. The board shall report to Legislative Council in the event the sum held under this subdivision (c)(2)(B)(ii)(*a*) becomes less than three million five hundred thousand dollars ($3,500,000).

(b) These funds may be utilized by the public safety answering points for the following purposes in connection with compliance with the Federal Communications Commission requirements: upgrading, purchasing, programming, installing, and maintaining necessary data, basic 911 GIS mapping, hardware, and software, including any network elements required to supply enhanced 911 phase II cellular, voice over internet protocol, and other nontraditional telephone service.

(c) Invoices must be presented to the board in connection with any request for reimbursement and be approved by a majority vote of the board to receive reimbursement.

(d) Any invoices presented to the board for reimbursements of costs not described by this section may be approved only by a unanimous vote of the board;

(iii) Not more than five-tenths percent (0.5%) of the fees collected under subdivision (b)(1)(A) of this section may be utilized by the board to compensate the independent auditor and for administrative expenses;

(iv) All interest received on funds in the interest-bearing account shall be disbursed as prescribed in subdivision (c)(2)(B)(i) of this section; and

(v)*(a)* All cities and counties receiving funds under this section shall submit to the board no later than April 1 of each year an explanation and accounting of the funds received and expenditures of those funds for the previous calendar year, along with a copy of the budget for the previous year and a copy of the year-end appropriation and expenditure analysis of any participating or supporting counties, cities, or agencies.

(b)(1) The board may require any other information necessary to ensure that the funds have been properly utilized according to this section.

(2) All cities and counties receiving funds under this section also shall submit to the board no later than April 1 of each year a copy of all documents reflecting the 911 funds received for the previous calendar year, including without limitation wireless, wireline, general revenues, sales taxes, and other sources used by the city or county for 911 services.

(c) Failure to submit the proper accounting information and failure to utilize the funds in a proper manner may result in the suspension or reduction of funding until corrected;

(C)(i) To promulgate rules necessary to perform its duties prescribed by this subchapter.

(ii) In determining the population basis for distribution of funds under subdivision (c)(2)(B)(i) of this section, the board shall determine, based on the latest federal decennial census, the population of all unincorporated areas of counties operating a 911 public safety communications center that has the capacity of receiving commercial mobile radio service, voice over internet protocol service, or nontraditional 911 calls on dedicated 911 trunk lines, and the population of all incorporated areas operating a 911 public safety communications center that has the capability of receiving commercial mobile radio service, voice over internet protocol service, or nontraditional 911 calls on dedicated 911 trunk lines and compare the population of each of those political subdivisions to the total population;

(D) To submit annual reports to the office of the Auditor of State outlining fees collected and moneys disbursed to public safety answering points under subdivision (b)(1)(A) of this section; and

(E)(i) To retain an independent third-party auditor for the purposes of receiving, maintaining, and verifying the accuracy of any proprietary information submitted to the board by commercial mobile radio service providers.

(ii) Due to the confidential and proprietary nature of the information submitted by commercial mobile radio service providers, the information shall be retained by the independent auditor in confidence, shall be subject to review only by the Auditor of State, and shall not be subject to the Freedom of Information Act of 1967, § 25-19-101 et seq., nor released to any third party.

(iii) The information collected by the independent auditor shall be released only in aggregate amounts that do not identify or allow identification of numbers of subscribers or revenues attributable to an individual commercial mobile radio service provider.

(3) Commercial mobile radio service providers, voice over internet protocol, or other nontraditional communications providers shall be entitled to retain one percent (1%) of the fees collected under subdivision (b)(1)(A) of this section as reimbursement for collection and handling of the charges.

(d)(1) Notwithstanding any other provision of the law, in no event shall any commercial mobile radio, voice over internet protocol service, or nontraditional service provider, or its officers, employees, assigns, or agents be liable for civil damages or criminal liability in connection with the development, design, installation, operation, maintenance, performance, or provision of 911 service.

(2) Nor shall any commercial mobile radio, voice over internet protocol, or nontraditional service provider, its officers, employees, assigns, or agents be liable for civil damages or be criminally liable in connection with the release of subscriber information to any governmental entity as required under the provisions of this subchapter.

(e) The service charge shall have uniform application and shall be imposed throughout the political subdivision to the greatest extent possible in conformity with availability of the service in any area of the political subdivision.

(f)(1) An emergency telephone service charge, except with regard to the commercial mobile radio service emergency telephone service charge, shall be imposed only upon the amount received from the tariff rate exchange access lines.

(2)(A) If there is no separate exchange access charge stated in the service supplier's tariffs, the governing authority shall, except with regard to the commercial mobile radio service emergency telephone service charge, determine a uniform percentage not in excess of eighty-five percent (85%) of the tariff rate for basic exchange telephone service.

(B) This percentage shall be deemed to be the equivalent of tariff rate exchange access lines and shall be used until such time as the service supplier establishes such a tariff rate.

(3)(A) No service charge shall be imposed upon more than one hundred (100) exchange access facilities per person per location.

(B) No service charge shall be imposed upon more than one hundred (100) voice over internet protocol connections per person per location.

(C) Trunks or service lines used to supply service to commercial mobile radio service providers shall not have a service charge levied against them.

(4) Any emergency telephone service charge, including the commercial mobile radio service emergency telephone service charge, shall be added to and may be stated separately in the billing by the service supplier to the service user.

(5) Every billed service user shall be liable for any service charge imposed under this subsection until it has been paid to the service supplier.

(g) The political subdivision may pursue against a delinquent service user any remedy available at law or in equity for the collection of a debt.

History. Acts 1985, No. 683, § 5; A.S.A. 1947, § 73-1826; Acts 1995, No. 627, § 1; 1997, No. 106, § 1; 1997, No. 810, § 2; 1997, No. 952, § 1; 1999, No. 46, § 1; 2001, No. 907, § 3; 2003, No. 111, § 1; 2003, No. 1792, § 1; 2005, No. 1997, § 1; 2005, No. 2145, § 16; 2007, No. 582, § 2; 2007, No. 1049, § 33; 2009, No. 1221, § 2; 2009, No. 1480, § 48; 2011, No. 640, § 1.

Amendments. The 2011 amendment inserted (c)(2)(B)(i)(*b*); inserted "(c)(2)(B)(ii)(*a*)" in (c)(2)(B)(ii)(*a*); and substituted "rules" for "regulations" in (c)(2)(C)(i).

12-10-323. Authorized expenditures of revenues.

(a)(1) Any revenue generated under §§ 12-10-318 — 12-10-321 may be expended only in direct connection with the provision of 911 services and only for the following purposes:

(A) The engineering, installation, and recurring costs necessary to implement, operate, and maintain a 911 telephone system;

(B) The costs necessary for forwarding and transfer capabilities of calls from the 911 public safety communication center to dispatch centers or to other 911 public safety communication centers;

(C) Engineering, construction, lease, or purchase costs to lease, purchase, build, remodel, or refurbish a 911 public safety communication center and for necessary emergency and uninterruptable power supplies for the center;

(D) Personnel costs, including salary and benefits, of each position charged with supervision and operation of the 911 public safety communication center and system;

(E) Purchase, lease, operation, and maintenance of consoles, telephone and communications equipment owned or operated by the political subdivisions and physically located within and for the use of the 911 public safety communication center, and radio or microwave towers and equipment with lines that terminate in the 911 public safety communication center;

(F) Purchase, lease, operation, and maintenance of computers, data processing equipment, associated equipment, and leased audio or data lines assigned to and operated by the 911 public safety

communication center for the purposes of coordinating or forwarding calls, dispatch, or recordkeeping of public safety and private safety agencies for which the 911 public safety communication center is the public safety answering point and to provide information assistance to those agencies;

(G) Supplies, equipment, public safety answering point personnel training, vehicles, and vehicle maintenance, if such items are solely and directly related to and incurred by the political subdivision in mapping, addressing, and readdressing a 911 system; and

(H) Training costs and all costs related to training under this subchapter.

(2) Nothing in this subsection shall be interpreted or construed as authorizing a political subdivision to purchase emergency response vehicles, law enforcement vehicles, or other political subdivision vehicles from such funds.

(b) Expenditure of revenue generated by §§ 12-10-318 — 12-10-321 for purposes not identified in this section is prohibited.

(c) Appropriations of funds from any source other than §§ 12-10-318 — 12-10-321 may be expended for any purpose and may supplement the authorized expenditures of this section and may fund other activities of the 911 public safety communication center not associated with the provision of emergency services.

History. Acts 1985, No. 683, § 6; A.S.A. 1947, § 73-1827; Acts 1989, No. 524, § 1; 1991, No. 1196, § 5; 1997, No. 952, § 2; 2003, No. 176, § 1; 2011, No. 640, § 2.

Amendments. The 2011 amendment substituted "coordinating or forwarding calls" for "coordinating, forwarding of calls" in (a)(1)(F); and added (a)(1)(H).

12-10-325. Training standards.

(a)(1) A public safety agency, a public safety answering point, a dispatch center, or a 911 public safety communications center may provide training opportunities for 911 public safety communication center personnel through the Arkansas Commission on Law Enforcement Standards and Training and the Arkansas Law Enforcement Training Academy.

(2) The Arkansas Law Enforcement Training Academy shall develop training standards for dispatchers and instructors in Arkansas in consultation with the Association of Public-Safety-Communications Officials-International, Inc. and submit the training standards to the Arkansas Commission on Law Enforcement Standards and Training for approval.

(3)(A) Training for instructors may include without limitation instructor development, course development, leadership development, and other appropriate 911 instructor training.

(B) Training for dispatchers may include without limitation call taking, customer service, stress management, mapping, call processing, telecommunication and radio equipment training, training with devices for the deaf, autism, and other appropriate 911 dispatcher training.

(4) An entity that provides training under subdivision (a)(1) of this section may retain training records created under this section.

(b) A private safety agency that performs dispatch functions is not eligible for training under this section.

History. Acts 2011, No. 640, § 3.

CHAPTER 11

PREVENTION OF PUBLIC OFFENSES

SECTION.

12-11-106 — 12-11-109. [Repealed.]

Publisher's Notes. These sections, concerning discharge or further requirement of security, security by recognizance, security after commitment, and breaches of bond, were repealed by Acts 2011, No. 779, § 4, They were derived from the following sources:

12-11-106. Crim. Code, §§ 376, 378, 379; C. & M. Dig., §§ 3345-3348; Pope's Dig., §§ 4193-4196; A.S.A. 1947, §§ 42-220 — 42-222.

12-11-107. Crim. Code, § 382; C. & M. Dig., § 3349; Pope's Dig., § 4197; A.S.A. 1947, § 42-223.

12-11-108. Crim. Code, § 377; C. & M. Dig., § 3350; Pope's Dig., § 4198; A.S.A. 1947, § 42-224

12-11-109 Crim. Code, §§ 380, 381; C. & M. Dig., §§ 3351, 3352; Pope's Dig., §§ 4199, 4200; A.S.A. 1947, §§ 42-225, 42-226.

12-11-110. Drunken, insane, and disorderly persons.

A law enforcement officer shall arrest a drunken, insane, or disorderly person whom he or she finds at large and not in the care of a competent person.

History. Crim. Code, §§ 383-385, 387; C. & M. Dig., §§ 3353-3357; Pope's Dig., §§ 4201-4205; A.S.A. 1947, §§ 42-227 — 42-230; Acts 2011, No. 779, § 5.

Amendments. The 2011 amendment rewrote the section.

CHAPTER 12

CRIME REPORTING AND INVESTIGATIONS

SUBCHAPTER.

SUBCHAPTER 1 — GENERAL PROVISIONS

12-12-104. Physical evidence in sex offense prosecutions—Retention and disposition.

(a) In a prosecution for a sex offense or a violent offense, the law enforcement agency shall preserve, subject to a continuous chain of custody, any physical evidence secured in relation to a trial and sufficient official documentation to locate that evidence.

(b)(1) After a trial resulting in conviction, the evidence shall be impounded and securely retained by a law enforcement agency.

(2) Retention shall be the greater of:

(A) Permanent following any conviction for a violent offense;

(B) For twenty-five (25) years following any conviction for a sex offense; and

(C) For seven (7) years following any conviction for any other felony for which the defendant's genetic profile may be taken by a law enforcement agency and submitted for comparison to the State DNA Data Base for unsolved offenses.

(c) After a conviction is entered, the prosecuting attorney or law enforcement agency having custody of the evidence may petition the court with notice to the defendant for entry of an order allowing disposition of the evidence if, after a hearing and a reasonable period of time in which to respond, the court determines by a preponderance of the evidence that:

(1) The evidence has no significant value for forensic analysis and must be returned to its rightful owner; or

(2) The evidence has no significant value for forensic analysis and is of a size, bulk, or physical character not usually retained by the law enforcement agency and cannot practicably be retained by the agency.

(d) The court may order the disposition of the evidence if the defendant is allowed the opportunity to take reasonable measures to remove or preserve portions of the evidence in question for future testing.

(e)(1) It is unlawful for any person to purposely fail to comply with the provisions of this section.

(2) A person who violates this section is guilty of a Class A misdemeanor.

(f) As used in this section:

(1) "Law enforcement agency" means any police force or organization whose primary responsibility as established by statute or ordinance is

the enforcement of the criminal laws, traffic laws, or highway laws of this state;

(2) "Sex offense" means:

(A) Rape, § 5-14-103;

(B) Sexual indecency with a child, § 5-14-110;

(C) Sexual assault in the first degree, § 5-14-124;

(D) Sexual assault in the second degree, § 5-14-125;

(E) Sexual assault in the third degree, § 5-14-126;

(F) Sexual assault in the fourth degree, § 5-14-127;

(G) Incest, § 5-26-202;

(H) Engaging children in sexually explicit conduct for use in visual or print medium, § 5-27-303;

(I) Transportation of minors for prohibited sexual conduct, § 5-27-305;

(J) Employing or consenting to use of child in sexual performance, § 5-27-402;

(K) Producing, directing, or promoting a sexual performance by a child, § 5-27-403;

(L) Computer child pornography, § 5-27-603;

(M) Computer exploitation of a child in the first degree, § 5-27-605(a);

(N) Promoting prostitution in the first degree, § 5-70-104;

(O) Stalking, § 5-71-229;

(P) An attempt, solicitation, or conspiracy to commit any of the offenses enumerated in this subdivision (f)(2); or

(Q) A violation of any former law of this state that is substantially equivalent to any of the offenses enumerated in this subdivision (f)(2); and

(3) "Violent offense" means:

(A) Capital murder, § 5-10-101, murder in the first degree, § 5-10-102, or murder in the second degree, § 5-10-103;

(B) Manslaughter, § 5-10-104;

(C) Kidnapping, § 5-11-102;

(D) False imprisonment in the first degree, § 5-11-103;

(E) Permanent detention or restraint, § 5-11-106;

(F) Robbery, § 5-12-102;

(G) Aggravated robbery, § 5-12-103;

(H) Battery in the first degree, § 5-13-201;

(I) Battery in the second degree, § 5-13-202;

(J) Aggravated assault, § 5-13-204;

(K) Terroristic threatening in the first degree, § 5-13-301;

(L) Domestic battering in the first degree,§ 5-26-303, domestic battering in the second degree, § 5-26-304, and domestic battering in the third degree, § 5-26-305;

(M) Aggravated assault on family or household member, § 5-26-306;

(N) Engaging in a continuing criminal gang, organization, or enterprise, § 5-74-104;

(O) An attempt, solicitation, or conspiracy to commit any of the offenses enumerated in this subdivision (f)(3); or

(P) A violation of any former law of this state that is substantially equivalent to any of the offenses enumerated in this subdivision (f)(3).

History. Acts 2001, No. 1780, § 11; 2011, No. 779, § 6.

Amendments. The 2011 amendment rewrote (f)(2) and (f)(3).

12-12-107. Adult abuse and domestic violence reporting.

(a) As used in this section:

(1) "Adult" means an individual eighteen (18) years of age or older who is not a maltreated adult under the Adult and Long-Term Care Facility Resident Maltreatment Act, § 12-12-1701 et seq.; and

(2) "Health care provider" means a person, corporation, facility, or institution licensed, certified, or otherwise authorized by the law of this state to administer health care in the ordinary course of business or practice of a profession.

(b) A health care provider may report to a law enforcement agency an injury to an adult that the health care provider has reason to believe is the result of a battery or other physically abusive conduct, including physical injuries resulting from domestic violence, if the:

(1) Injured adult agrees; or

(2) Health care provider determines that the report is necessary to prevent serious harm to the injured adult.

(c) A health care provider that makes a report under subdivision (b)(2) of this section shall promptly inform the injured adult that the report has been or will be made.

(d) A report under this section shall state the name of the injured adult and the character and extent of the adult's injuries.

(e) A report under this section shall be made to one (1) or more of the following law enforcement agencies:

(1) The county sheriff;

(2) Within a city of the first class, the municipal law enforcement agency; or

(3) The Department of Arkansas State Police.

(f) A health care provider making or deciding not to make a report in good faith under this section is immune from criminal or civil liability for making or deciding not to make the report.

History. Acts 2011, No. 1004, § 1.

A.C.R.C. Notes. The reference to § 12-12-107 in § 5-14-202 is not a reference to this section. It is a reference to a § 12-12-107 that would have required HIV testing for defendants charged with certain sex offenses. That § 12-12-107 was not enacted. See the note at § 5-14-202 for further explanation.

Subchapter 2 — Arkansas Crime Information Center

12-12-212. Release or disclosure to unauthorized person — Penalty.

(a) A person is guilty of a Class A misdemeanor upon conviction if the person:

(1) Knowingly accesses information or willfully obtains information collected and maintained under this subchapter for a purpose not specified by this subchapter; or

(2) Knowingly releases or discloses information maintained under this subchapter to another person who lacks authority to receive the information.

(b) A person is guilty of a Class D felony upon conviction if the person violates subsection (a) of this section for the purpose of:

(1) Furthering the commission of a misdemeanor offense or felony offense by the person or another person;

(2) Enhancing or assisting a person's position in a legal proceeding in this state or influencing the outcome of a legal proceeding in this state for the benefit of the person or a member of the person's family;

(3) Causing a pecuniary or professional gain for the person or a member of the person's family; or

(4) Political purposes for the person or a member of the person's family.

History. Acts 1971, No. 286, § 10; 1975, No. 742, § 9; A.S.A. 1947, § 5-1110; Acts 1997, No. 826, § 3; 2011, No. 779, § 7; 2011, No. 1224, § 1.

A.C.R.C. Notes. Pursuant to § 1-2-207(b) and Acts 2011, No. 779, § 25, the amendments to this section by Acts 2011, No. 779, § 7 are superseded by the amendments to this section by Acts 2011, No. 1224, § 1.

Acts 2011, No. 1224, § 3, provided: "The provisions of this act shall not be retroactive."

Amendments. The 2011 amendment by No. 779 substituted "knowingly releases or discloses" for "shall release or disclose" and "upon conviction is guilty" for "shall be deemed guilty."

The 2011 amendment by No. 1224 rewrote the section.

12-12-216. Carry forward.

(a) At the close of each fiscal year, the Director of the Arkansas Crime Information Center shall certify to the Chief Fiscal Officer of the State the amount, if any, of unexpended moneys and appropriations in the Crime Information System Fund or its successor resulting from the reimbursement to the Arkansas Crime Information Center by municipal, county, state, or federal governments for teleprocessing services.

(b)(1) Any balance of such moneys and appropriations shall be carried forward and made available for the maintenance, operation, improvement, and other necessary expenditures in providing telepro-

cessing services to such municipal, county, state, and federal agencies served by the center.

(2) The total amount that is carried forward under this section shall be reported in the budget manuals that are presented to the Legislative Council and Joint Budget Committee during the presession budget hearings.

History. Acts 1997, No. 911, § 9; 2011, No. 779, § 8.

Amendments. The 2011 amendment substituted "budget hearings" for "budget hearings which are held in the fall of each even-numbered year" in (b)(2).

12-12-217. Annual report.

(a) On July 31 of each year the Arkansas Crime Information Center shall submit an annual report to the Legislative Council showing the number of persons arrested for each criminal offense classification, comparing the state and each individual reporting agency.

(b) The report shall include a breakdown by race of all persons arrested in each criminal offense classification.

History. Acts 2003, No. 1031, § 2; 2011, No. 779, § 9.

Amendments. The 2011 amendment deleted "and the Commission on Disparity in Sentencing" following "Legislative Council" in (a).

Subchapter 3 — State Crime Laboratory

12-12-302. Board created — Members — Meetings.

(a)(1) There is created a State Crime Laboratory Board.

(2)(A) The members of the board shall be appointed by the Governor and confirmed by the Senate.

(B) However, a vacancy may be temporarily filled by the Governor until the Senate shall next meet.

(b) The members appointed by the Governor shall be composed of:

(1) One (1) member of the active judiciary;

(2) One (1) practicing member of the legal profession;

(3) One (1) active county sheriff;

(4) One (1) active chief of police;

(5) One (1) active prosecuting attorney;

(6) Two (2) physicians engaged in the active practice of private or academic medicine; and

(7) One (1) member at large from the state.

(c)(1) Appointments to the board shall be for a term of seven (7) years.

(2)(A) All appointments made at any time other than the day following the expiration of a term shall be made for the unexpired portion of the term.

(B) If, however, the Governor shall not make an appointment by January 15 of the year in which the term expires, that member shall continue to serve until he or she is reappointed or a successor is appointed, and the term of that member shall run for seven (7) years from January 15 in the year the term expired rather than for seven (7) years from the date of actual appointment.

(d)(1) The board shall meet and elect one (1) of its members as chair and one (1) as vice chair.

(2) The chair shall have the power to call meetings of the board upon due notice of the meeting to all members of the board.

(e) A majority of the members of the board shall constitute a quorum to transact the business of the board.

(f) The board shall meet a minimum of one (1) time every three (3) months. Failure of any appointee to attend three (3) consecutive meetings shall constitute cause for removal from the board by the Governor.

(g) Members of the board may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq. The sums shall be paid from the appropriated maintenance and general operations funds of the State Crime Laboratory.

History. Acts 1991, No. 383, § 2; 1997, No. 250, § 67; 2011, No. 219, § 1.

Amendments. The 2011 amendment deleted "to be composed of eight (8) members" at the end of (a)(1); in (a)(2)(A), deleted the first sentence and substituted "The members of the board" for "the remaining seven (7) members of the board"; and substituted "Two (2) physicians" for "One (1) physician" in (b)(6).

12-12-306. State Medical Examiner.

(a) The Executive Director of the State Crime Laboratory shall appoint and employ a State Medical Examiner with the approval of the State Crime Laboratory Board.

(b) The executive director may remove the examiner only for cause and with the approval of the board.

History. Acts 1991, No. 383, § 3; 2011, No. 775, § 1.

Amendments. The 2011 amendment, in (a), substituted "Executive Director of the State Crime Laboratory" for "State Crime Laboratory Board" and added "with the approval of the State Crime Laboratory Board"; and, in (b), substituted "executive director" for "board" and added "and with the approval of the board."

12-12-312. Records confidential and privileged — Exception — Release.

(a)(1)(A)(i) The records, files, and information kept, obtained, or retained by the State Crime Laboratory under this subchapter are privileged and confidential.

(ii) The records, files, and information shall be released only under and by the direction of a court of competent jurisdiction, the prosecuting attorney having criminal jurisdiction over the case, or the public defender appointed or assigned to the case.

(B)(i) This section does not diminish the right of a defendant or his or her attorney to full access to all records pertaining to the case.

(ii) The laboratory shall disclose to a defendant or his or her attorney all evidence in the defendant's case that is kept, obtained, or retained by the laboratory.

(iii) The Department of Health may access autopsy records, files, and information under this subchapter for the purpose of implementing the quality improvement provisions of the Trauma System Act, § 20-13-801 et seq., and the rules adopted by the State Board of Health under the Trauma System Act, § 20-13-801 et seq.

(2) However, a full report of the facts developed by the State Medical Examiner or his or her assistants shall be promptly filed with the law enforcement agencies, county coroner, and prosecuting attorney of the jurisdiction in which the death occurred.

(b) The State Crime Laboratory Board shall promulgate rules and regulations not contrary to law regarding the release of reports and information by the staff of the laboratory.

(c) All records, files, and information obtained or developed by the laboratory pertaining to a capital offense committed by a defendant who is subsequently sentenced to death for the commission of that offense shall be preserved and retained until the defendant's execution.

History. Acts 1969, No. 321, § 11; 1979, No. 864, § 16; A.S.A. 1947, §§ 42-621, 42-1218; Acts 1993, No. 1304, § 1; 1999, No. 519, § 1; 2001, No. 211, § 1; 2001, No. 917, § 1; 2011, No. 892, § 1.

Amendments. The 2011 amendment added "that is kept, obtained, or retained by the laboratory" in (a)(1)(B)(ii); and inserted (a)(1)(B)(iii).

12-12-314. Fees — Disposition.

(a) The State Crime Laboratory shall charge certain fees in an amount to be determined by the State Crime Laboratory Board, but subject to the limitations set forth in this section for certain records, reports, and consultations by laboratory physicians and analysts, and expert witness testimony provided in the trial of civil lawsuits, as follows:

(1) A fee shall be charged for records and reports of the laboratory in a reasonable amount to be set by the board when the request for the report shall be from other than a law enforcement or criminal justice system agency;

(2)(A) A fee shall be charged in an amount to be set by the board for consultations, scientific or medical research, depositions, expert witness testimony, and travel to and from courts.

(B) The fees under subdivision (a)(2)(A) of this section shall be at a rate not to exceed two hundred twenty-five dollars ($225) per hour or one thousand eight hundred dollars ($1,800) per day and shall be

levied against the requesting individual, agency, or organization for work done in civil cases in which laboratory personnel involvement results from the performance of duties and responsibilities under this subchapter; and

(3) A charge of up to three thousand dollars ($3,000) for each autopsy requested by non-law enforcement officials.

(b) At no time shall any fee be levied or charge made to or against any law enforcement agency of the State of Arkansas for work performed under the provisions of this subchapter.

(c)(1) All fees collected by the laboratory for copies of autopsy reports, autopsies requested by the Federal Aviation Administration, and expenses paid employees for testimony as expert witnesses shall be deposited as a refund to expenditures.

(2) Other moneys derived from the charges provided for and authorized by this section shall be deposited into the State Treasury to the credit of the Miscellaneous Agencies Fund Account of the State General Government Fund.

History. Acts 1975, No. 350, § 4; 1979, No. 864, § 22; 1985, No. 644, § 4; A.S.A. 1947, §§ 42-1224, 42-1225; Acts 1995, No. 1189, § 1; 2011, No. 775, § 2.

Amendments. The 2011 amendment, in (a)(2)(B), inserted "under subdivision (a)(2)(A) of this section," substituted "two hundred twenty-five dollars ($225)" for "seventy-five dollars ($75.00)," and substituted "one thousand eight hundred dollars ($1,800)" for "six hundred dollars ($600)"; and substituted "three thousand dollars ($3,000)" for "one thousand dollars ($1,000)" in (a)(3).

12-12-320. Autopsies — Removal of pituitary gland.

(a) The State Medical Examiner and his or her assistants may remove the pituitary gland during the course of an autopsy and donate the pituitary gland to an appropriate organization.

(b) However, the pituitary gland shall not be removed under the authority of this section if the next of kin or the person having the right to control the disposition of the decedent's remains objects.

History. Acts 1981, No. 984, § 1; A.S.A. 1947, § 42-1213.2; Acts 2011, No. 779, § 10.

Amendments. The 2011 amendment substituted "an appropriate organization" for "the Arkansas Dwarf Association" in (a).

Subchapter 6 — Knife and Gunshot Wound Reporting

SECTION.
12-12-602. Report of treatment required.

12-12-602. Report of treatment required.

(a) All physicians, surgeons, hospitals, druggists, or other persons or entities that render first aid treatment to a person shall report as provided in subsection (b) of this section if they treat or receive in the hospital a case of a:

(1) Knife or gunshot wound when the knife or gunshot wound appears to have been intentionally inflicted; or

(2) Burn wound that could reasonably be connected to criminal activity that is:

(A) A second or third degree burn to five percent (5%) or more of a person's body; or

(B) A burn to a person's upper respiratory tract or laryngeal edema due to the inhalation of super-heated air.

(b) The reporting requirements of this subchapter are satisfied if:

(1) The report is made to the county sheriff;

(2) Within a city of the first class, the report is made to the municipal law enforcement agency; or

(3) The report is made under subdivision (a)(2) of this section to the local fire marshal, fire chief, assistant fire chief, or an officer of the fire department having jurisdiction.

(c) A physician, surgeon, hospital, druggist, or other person or entity required to report under this section that, in good faith, makes a report under this section has immunity from any civil or criminal liability that might otherwise be incurred or imposed with respect to the making of a report under this section.

History. Acts 1949, No. 258, § 1; A.S.A. 1947, § 42-501; Acts 2005, No. 1962, § 33; 2011, No. 270, § 1.

Amendments. The 2011 amendment subdivided (a) into (a)(1) and (a)(2); in the introductory paragraph of (a), inserted "to a person" and substituted "as provided in subsection (b) of this section if they treat or receive in the hospital a case of a" for "to the office of the county sheriff of the county all cases of"; substituted "wound when the knife or gunshot wound appears" for "wounds treated by them or received in the hospital when the wounds appear" in (a)(1); inserted (a)(2); rewrote (b); and added (c).

Subchapter 7 — Psychological Stress Tests

12-12-704. Results inadmissible.

CASE NOTES

Cited: Porter v. Ark. Dep't of Human Servs., 2011 Ark. App. 342, — S.W.3d — (2011).

Subchapter 8 — Missing Children

SECTION.

12-12-801. Report of missing child — Notation on records.

(a) When either a law enforcement officer or the Attorney General is notified by the parents, guardian, or other person having custody of a

child that the child is missing, the law enforcement officer or the Attorney General shall:

(1) Ensure that the missing child information is entered into the Missing Persons Information Clearinghouse within the Arkansas Crime Information Center under § 12-12-205 and the National Crime Information Center; and

(2) Within five (5) business days after being notified by the parents, guardian, or other person having custody of the child, inform by certified mail, return receipt requested, the Division of Vital Records of the Department of Health and the superintendent or school administrator of the school where the child was attending that the child has been reported as missing.

(b) The division shall enter on or attach to the child's birth certificate a notice that the child has been reported missing. The school the child was attending shall make or attach the same notation on the child's school records.

History. Acts 1987, No. 164, § 1; 1993, No. 116, § 1; 2011, No. 598, § 1.

Amendments. The 2011 amendment subdivided part of (a); inserted (a)(1); in (a)(2), substituted "notified by the parents, guardian, or other person having custody of the child" for "so notified" and inserted "or school administrator"; and inserted "the child was attending" in (b).

Subchapter 9 — Sex Offender Registration Act of 1997

12-12-901. Title.

RESEARCH REFERENCES

ALR. State Statutes or Ordinances Requiring Persons Previously Convicted of Crime to Register with Authorities as Applied to Juvenile Offenders — Constitutional Issues. 37 A.L.R.6th 55.

State Statutes or Ordinances Requiring Persons Previously Convicted of Crime to Register with Authorities as Applied to Juvenile Offenders — Duty to Register, Requirements for Registration, and Procedural Matters. 38 A.L.R.6th 1.

State Statutes or Ordinances Requiring Persons Previously Convicted of Crime to Register with Authorities as Applied to Juvenile Offenders — Expungement, Stay or Deferral, Exceptions, Exemptions, and Waiver. 39 A.L.R.6th 577.

Court's Duty to Advise Sex Offender as to Sex Offender Registration Consequences or Other Restrictions Arising from Plea of Guilty, or to Determine that Offender Is Advised Thereof. 41 A.L.R.6th 141.

Application of *Apprendi v. New Jersey,* 530 U.S. 466, 120 S. Ct. 2348, 147 L. Ed. 2d 435, 2000 U.S. LEXIS 4304 (2000), and

Blakely v. Washington, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403, 2004 U.S. LEXIS 4573, 6 A.L.R. Fed. 2d 619 (2004), to Sex Offender Registration Statutes. 51 A.L.R.6th 139.

Validity, Construction, and Application of Federal Sex Offender Registration and Notification Act (SORNA), 42 U.S.C.A. §§ 16901 et seq., its Enforcement Provision, 18 U.S.C.A § 2250, and Associated Regulations. 30 A.L.R. Fed. 2d 213.

CASE NOTES

Sentence.

Circuit court did not err in revoking the suspended sentence defendant received for failure to comply with the reporting requirements of this section, because the circuit court's finding that defendant failed to report his address was not clearly erroneous; defendant's parole officer visited the location on consecutive days and did not see defendant there. Wicks v. State, 2010 Ark. App. 499, — S.W.3d — (2010).

Circuit court did not err by denying defendant's motion to dismiss the state's petition to revoke the suspended sentence he received for failure to comply with the reporting requirements of the this section, because defendant did not receive an illegal sentence; by pleading guilty, defendant admitted that he was required to register as a sex offender under the Act by virtue of his conviction for rape in California, and that defendant could have asserted a defense to the charge did not call into question the circuit court's authority to preside over the criminal matter, to accept his plea of guilty, and to sentence appellant accordingly. Wicks v. State, 2010 Ark. App. 499, — S.W.3d — (2010).

Circuit court did not have jurisdiction to entertain defendant's motion to dismiss the state's petition to revoke the suspended sentence he received for failure to comply with the reporting requirements of this section, because defendant failed to pursue postconviction relief under Ark. R. Crim. P. 37.1 within ninety days of the date of the entry of judgment; thus, he was barred from challenging his plea and conviction during a revocation proceeding. Wicks v. State, 2010 Ark. App. 499, — S.W.3d — (2010).

Cited: Morrison v. State, 2009 Ark. App. 681, — S.W.3d — (2009).

12-12-903. Definitions.

RESEARCH REFERENCES

ALR. Validity, Construction, and Application of State Statute Including "Sexually Motivated Offenses" Within Definition of Sex Offense for Purposes of Sentencing or Classification of Defendant as Sex Offender. 30 A.L.R.6th 373.

12-12-904. Failure to comply with registration and reporting requirements — Refusal to cooperate with assessment process.

RESEARCH REFERENCES

ALR. Validity, Construction, and Application of State Statutes Imposing Criminal Penalties for Failure to Register as Required Under Sex Offender or Other Criminal Registration Statutes. 33 A.L.R.6th 91.

CASE NOTES

ANALYSIS

In General.
Evidence.

In General.

Trial court did not utilize defendant's failure to register as a sex and child offender as an additional ground to support the revocation of his suspended sentence because the trial court merely entered a judgment declaring defendant guilty of that charge and pronounced a prison sentence on the registration violation for which he was originally given a suspended sentence; imposition of the sentence was separate and apart from the revocation and was well within the discretion of the trial court. Lowe v. State, 2010 Ark. App. 284, — S.W.3d — (2010).

Evidence.

Defendant's conviction for the failure to register as a sex offender, or failure to report a change of address, in violation of this section was appropriate because the evidence supported a legitimate inference that he lied when he claimed to continue to live at a residence. The only evidence offered on his behalf was the allegation that he continued to live at the residence without furniture or water, while he allowed the grass to become overgrown. Morrison v. State, 2009 Ark. App. 681, — S.W.3d — (2009).

Probation of defendant, a registered sex offender was properly revoked for failing to comply with sex offender registration and reporting requirements, as required by this section, because defendant admitted that he was told that he could not live at a residential care facility which abutted a daycare but he did not move or provide another address for sex offender registry. Gray v. State, 2010 Ark. App. 159, — S.W.3d — (2010).

12-12-905. Applicability.

RESEARCH REFERENCES

ALR. Validity, Construction, and Application of State Statutory Requirement that Person Convicted of Sexual Offense in Other Jurisdiction Register or Be Classified as Sexual Offender in Forum State. 34 A.L.R.6th 171.

CASE NOTES

In General.

Defendant was properly convicted of knowingly failing to register as a sex offender under 18 U.S.C.S. § 2250 because he was subject to the registration requirements under Haw. Rev. Stat. § 846E-2(a) upon his Hawaii sex offense conviction and he had a duty to re-register when he re-entered Arkansas pursuant to this section and § 12-12-906. United States v. Brewer, 628 F.3d 975 (8th Cir. 2010).

12-12-906. Duty to register or verify registration generally — Review of requirements with offenders.

(a)(1)(A)(i) At the time of adjudication of guilt, the sentencing court shall enter on the judgment and commitment or judgment and disposition form that the offender is required to register as a sex offender and shall indicate whether the:

(a) Offense is an aggravated sex offense;

(b) Sex offender has been adjudicated guilty of a prior sex offense under a separate case number; or

(c) Sex offender has been classified as a sexually violent predator.

(ii) If the sentencing court finds the offender is required to register as a sex offender, then at the time of adjudication of guilt the sentencing court shall require the sex offender to complete the sex offender registration form prepared by the Director of the Arkansas Crime Information Center pursuant to § 12-12-908 and shall forward the completed sex offender registration form to the Arkansas Crime Information Center.

(B)(i) The Department of Correction shall ensure that a sex offender received for incarceration has completed the sex offender registration form.

(ii) If the Department of Correction cannot confirm that the sex offender has completed the sex offender registration form, the Department of Correction shall require the sex offender to complete the sex offender registration form upon intake, release, or discharge.

(C)(i) The Department of Community Correction shall ensure that a sex offender placed on probation or another form of community supervision has completed the sex offender registration form.

(ii) If the Department of Community Correction cannot confirm that the sex offender has completed the sex offender registration form, the Department of Community Correction shall require the sex offender to complete the sex offender registration form upon intake, release, or discharge.

(D)(i) The Arkansas State Hospital shall ensure that the sex offender registration form has been completed for any sex offender found not guilty by reason of insanity and shall arrange an evaluation by Sex Offender Screening and Risk Assessment.

(ii) If the Arkansas State Hospital cannot confirm that the sex offender has completed the sex offender registration form, the Arkansas State Hospital shall ensure that the sex offender registration form is completed for the sex offender upon intake, release, or discharge.

(2)(A) A sex offender moving to or returning to this state from another jurisdiction shall register with the local law enforcement agency having jurisdiction within three (3) business days after the sex offender establishes residency in a municipality or county of this state.

(B)(i) Any person living in this state who would be required to register as a sex offender in the jurisdiction in which he or she was adjudicated guilty of a sex offense shall register as a sex offender in this state whether living, working, or attending school or other training in Arkansas.

(ii) A nonresident worker or student who enters the state shall register in compliance with Pub. L. No. 109-248, as it existed on January 1, 2007.

(C) A sex offender sentenced and required to register outside of Arkansas shall:

(i) Submit to assessment by Sex Offender Screening and Risk Assessment;

(ii) Provide a deoxyribonucleic acid (DNA) sample if a sample is not already accessible to the State Crime Laboratory; and

(iii)*(a)* Pay the mandatory fee of two hundred fifty dollars ($250) to be deposited into the DNA Detection Fund established by § 12-12-1119 within ninety (90) days from the date of registration.

(b) Failure to pay the fee required under subdivision (a)(2)(C)(iii)(*a*) of this section is a Class A misdemeanor.

(b)(1) The registration file of a sex offender who is confined in a correctional facility or serving a commitment following acquittal on the grounds of mental disease or defect shall be inactive until the registration file is updated by the department responsible for supervision of the sex offender.

(2) Immediately prior to the release or discharge of a sex offender or immediately following a sex offender's escape or his or her absconding from supervision, the Department of Correction, the Department of Community Correction, the Arkansas State Hospital, or the Department of Human Services shall update the registration file of the sex offender who is to be released or discharged or who has escaped or has absconded from supervision.

(c)(1)(A) When registering a sex offender as provided in subsection (a) of this section, the sentencing court, the Department of Correction, the Department of Community Correction, the Arkansas State Hospital, the Department of Human Services, or the local law enforcement agency having jurisdiction shall:

(i) Inform the sex offender of the duty to submit to assessment and to register and obtain the information required for registration as described in § 12-12-908;

(ii) Inform the sex offender that if the sex offender changes residency within the state, the sex offender shall give the new address and place of employment, education, higher education, or training to the Arkansas Crime Information Center in writing no later than ten (10) days before the sex offender establishes residency or is temporarily domiciled at the new address;

(iii)*(a)* Inform the sex offender that if the sex offender changes residency to another state or enters another state to work or attend school, the sex offender must also register in that state regardless of permanent residency.

(b) The sex offender shall register the new address and place of employment, education, higher education, or training with the center and with a designated law enforcement agency in the new state not later than three (3) business days after the sex offender establishes residence or is temporarily domiciled in the new state;

(iv) Obtain fingerprints and a photograph of the sex offender if these have not already been obtained in connection with the offense that triggered registration;

(v) Obtain a deoxyribonucleic acid (DNA) sample if one has not already been provided;

(vi) Require the sex offender to complete the entire registration process, including, but not limited to, requiring the sex offender to

read and sign a form stating that the duty of the sex offender to register under this subchapter has been explained;

(vii) Inform the sex offender that if the sex offender's address changes within the state or to another state due to an eviction, natural disaster, or any other unforeseen circumstance, the sex offender shall give the new address to the center in writing no later than three (3) business days after the sex offender establishes residency;

(viii) Inform a sex offender who has been granted probation that failure to comply with the provisions of this subchapter may be grounds for revocation of the sex offender's probation; and

(ix) Inform a sex offender subject to lifetime registration under § 12-12-919 of the duty to:

(a) Verify registration and obtain the information required for registration verification as described in subsections (g) and (h) of this section; and

(b) Ensure that the information required for reregistration verification under subsections (g) and (h) of this section is provided to the local law enforcement agency having jurisdiction.

(B)(i) Any offender required to register as a sex offender must provide a deoxyribonucleic acid (DNA) sample, that is, a blood sample or saliva sample, upon registering if a sample has not already been provided to the State Crime Laboratory.

(ii) Any offender required to register as a sex offender who is entering the State of Arkansas must provide a deoxyribonucleic acid (DNA) sample, that is, a blood sample or saliva sample, upon registration and must pay the mandatory fee of two hundred fifty dollars ($250) to be deposited into the DNA Detection Fund established by § 12-12-1119.

(2) When updating the registration file of a sex offender, the Department of Correction, the Department of Community Correction, the Arkansas State Hospital, or the Department of Human Services shall:

(A) Review with the sex offender the duty to register and obtain current information required for registration as described in § 12-12-908;

(B) Review with the sex offender the requirement that if the sex offender changes address within the state, the sex offender shall give the new address to the center in writing no later than ten (10) days before the sex offender establishes residency or is temporarily domiciled at the new address;

(C) Review with the sex offender the requirement that if the sex offender changes address to another state, the sex offender shall register the new address with the center and with a designated law enforcement agency in the new state not later than three (3) business days after the sex offender establishes residence or is temporarily domiciled in the new state if the new state has a registration requirement;

(D) Require the sex offender to read and sign a form stating that the duty of the sex offender to register under this subchapter has been reviewed;

(E) Inform the sex offender that if the sex offender's address changes within the state or to another state due to an eviction, natural disaster, or any other unforeseen circumstance, the sex offender shall give the new address to the center in writing no later than three (3) business days after the sex offender establishes residency;

(F) Review with the sex offender the consequences of failure to provide any information required by subdivision (b)(2) of this section;

(G) Inform a sex offender subject to lifetime registration under § 12-12-919 of the duty to:

(i) Verify registration and report the information required for registration verification as described in subsections (g) and (h) of this section; and

(ii) Ensure that the information required for registration verification under subsections (g) and (h) of this section is provided to the local law enforcement agency having jurisdiction; and

(H) Review with a sex offender subject to lifetime registration under § 12-12-919 the consequences of failure to verify registration under § 12-12-904.

(d) When registering or updating the registration file of a sexually violent predator, in addition to the requirements of subdivision (c)(1) or (2) of this section, the sentencing court, the Department of Correction, the Department of Community Correction, the Arkansas State Hospital, the Department of Human Services, or the local law enforcement agency having jurisdiction shall obtain documentation of any treatment received for the mental abnormality or personality disorder of the sexually violent predator.

(e) Any sex offender working, enrolled, or volunteering in a public or private elementary, secondary or postsecondary school, or institution of training shall notify the center of that status and shall register with the local law enforcement agency having jurisdiction over that campus.

(f)(1) An offender required to register pursuant to this subchapter shall not change his or her name unless the change is:

(A) Incident to a change in the marital status of the sex offender; or

(B) Necessary to effect the exercise of the religion of the sex offender.

(2) The change in the sex offender's name shall be reported to the Director of the Arkansas Crime Information Center within ten (10) calendar days after the change in name.

(3) A violation of this subsection is a Class C felony.

(g)(1) Except as provided in subsection (h) of this section, a sex offender subject to lifetime registration under § 12-12-919 shall report in person every six (6) months after registration to the local law enforcement agency having jurisdiction to verify registration.

(2) The local law enforcement agency having jurisdiction may determine the appropriate times and days for reporting by the sex offender, and the determination shall be consistent with the reporting requirements of subdivision (g)(1) of this section.

(3) Registration verification shall include reporting any change to the following information concerning the sex offender:

(A) Name;

(B) Social security number;

(C) Age;

(D) Race;

(E) Gender;

(F) Date of birth;

(G) Height;

(H) Weight;

(I) Hair and eye color;

(J)(i) Address of any permanent residence and address of any current temporary residence within this state or out of this state, including a rural route address and a post office box.

(ii) A post office box shall not be provided in lieu of a physical residential address;

(K) Date and place of any employment;

(L) Vehicle make, model, color, and license tag number that the sex offender owns, operates, or to which he or she has access;

(M)(i) Fingerprints.

(ii) If the local law enforcement agency having jurisdiction cannot confirm that the sex offender's fingerprints are contained in the automated fingerprint identification system, the local law enforcement agency having jurisdiction shall:

(a) Take the sex offender's fingerprints; and

(b) Submit the fingerprints to the center and to the Department of Arkansas State Police;

(N)(i) Photograph.

(ii) The local law enforcement agency having jurisdiction shall take a photograph of the sex offender at each registration verification and submit the photograph to the center;

(O) All computers or other devices with Internet capability to which the sex offender has access;

(P) All email addresses used by the sex offender; and

(Q) All user names, screen names, or instant message names that are used by the sex offender to communicate in real time with another person using the Internet.

(4) If the sex offender is enrolled or employed at an institution of higher education in this state, the sex offender shall also report to the local law enforcement agency having jurisdiction:

(A) The name and address of each institution of higher education where he or she is enrolled or employed, including each campus attended;

(B) The county where each campus is located; and

(C) His or her enrollment or employment status.

(5) If the place of residence of the sex offender is a motor vehicle, trailer, mobile home, modular home, or manufactured home, the sex offender shall report the following information concerning the motor vehicle, trailer, mobile home, modular home, or manufactured home:

(A) Vehicle identification number;

(B) License tag number;

(C) Registration number; and

(D) A description, including color scheme.

(6) If the place of residence of the sex offender is a vessel, live-aboard vessel, or houseboat, the sex offender shall report the following information concerning the vessel, live-aboard vessel, or houseboat:

(A) Hull identification number;

(B) Manufacturer's serial number;

(C) Name;

(D) Registration number; and

(E) A description, including color scheme.

(h)(1) A sexually violent predator subject to lifetime registration under § 12-12-919 shall report in person every three (3) months after registration to the local law enforcement agency having jurisdiction to verify registration.

(2) The local law enforcement agency having jurisdiction may determine the appropriate times and days for reporting by the sexually violent predator, and the determination shall be consistent with the reporting requirements of subdivision (h)(1) of this section.

(3) Registration verification shall include reporting any change to the following information concerning the sexually violent predator:

(A) Name;

(B) Social security number;

(C) Age;

(D) Race;

(E) Gender;

(F) Date of birth;

(G) Height;

(H) Weight;

(I) Hair and eye color;

(J)(i) Address of any permanent residence and address of any current temporary residence within this state or out of this state, including a rural route address and a post office box.

(ii) A post office box shall not be provided in lieu of a physical residential address;

(K) Date and place of any employment;

(L) Vehicle make, model, color, and license tag number that the sexually violent predator owns, operates, or to which he or she has access;

(M)(i) Fingerprints.

(ii) If the local law enforcement agency having jurisdiction cannot confirm that the sexually violent predator's fingerprints are con-

tained in the automated fingerprint identification system, the local law enforcement agency having jurisdiction shall:

(a) Take the sexually violent predator's fingerprints; and

(b) Submit the fingerprints to the center and to the Department of Arkansas State Police;

(N)(i) Photograph.

(ii) The local law enforcement agency having jurisdiction shall take a photograph of the sexually violent predator at each registration verification and submit the photograph to the center;

(O) All computers or other devices with Internet capability to which the sex offender has access;

(P) All email addresses used by the sex offender; and

(Q) All user names, screen names, or instant message names that are used by the sex offender to communicate in real time with another person using the Internet.

(4) If the sexually violent predator is enrolled or employed at an institution of higher education in this state, the sexually violent predator shall also report to the local law enforcement agency having jurisdiction:

(A) The name and address of each institution of higher education where he or she is enrolled or employed, including each campus attended;

(B) The county where each campus is located; and

(C) His or her enrollment or employment status.

(5) If the place of residence of the sexually violent predator is a motor vehicle, trailer, mobile home, modular home, or manufactured home, the sexually violent predator shall report the following information concerning the motor vehicle, trailer, mobile home, modular home, or manufactured home:

(A) Vehicle identification number;

(B) License tag number;

(C) Registration number; and

(D) A description, including color scheme.

(6) If the place of residence of the sexually violent predator is a vessel, live-aboard vessel, or houseboat, the sexually violent predator shall report the following information concerning the vessel, live-aboard vessel, or houseboat:

(A) Hull identification number;

(B) Manufacturer's serial number;

(C) Name;

(D) Registration number; and

(E) A description, including color scheme.

(i) Within three (3) days after verifying the registration of a sex offender under subsection (g) of this section or a sexually violent predator under subsection (h) of this section, the local law enforcement agency having jurisdiction shall report by written or electronic means all information obtained from or provided by the sex offender or sexually violent predator to the center.

History. Acts 1997, No. 989, § 5; 1999, No. 1353, § 4; 2001, No. 202, §§ 1-3; 2001, No. 1089, § 1; 2001, No. 1743, § 5; 2003, No. 1185, § 18; 2003, No. 1265, § 4[3]; 2003 (2nd Ex. Sess.), No. 21, § 4; 2005, No. 1962, § 34; 2006 (1st Ex. Sess.), No. 4, § 3; 2007, No. 394, § 5; 2011, No. 143, §§ 1, 2; 2011, No. 1009, § 1.

A.C.R.C. Notes. As enacted, Acts 2011, No. 143, contained two sections designated as § 1.

Amendments. The 2011 amendment by No. 143 deleted "beginning April 7, 2006" following "of this section" in (g)(1); inserted (O) through (Q) in (g)(3) and (h)(3); inserted "of higher education where he or she is enrolled or employed" in (g)(4)(A) and (h)(4)(A); and deleted "Beginning on March 21, 2007" at the beginning of (h)(1).

The 2011 amendment by No. 1009 added (a)(2)(C)(iii)(*b*); and added "within ninety (90) days from the date of registration" to the end of (a)(2)(C)(iii)(*a*).

RESEARCH REFERENCES

ALR. Validity, Construction, and Application of State Statute Including "Sexually Motivated Offenses" Within Definition of Sex Offense for Purposes of Sentencing or Classification of Defendant as Sex Offender. 30 A.L.R.6th 373.

Validity, Construction, and Application of State Statutes Imposing Criminal Penalties for Failure to Register as Required Under Sex Offender or Other Criminal Registration Statutes. 33 A.L.R.6th 91.

Validity, Construction, and Application of State Statutory Requirement that Person Convicted of Sexual Offense in Other Jurisdiction Register or Be Classified as Sexual Offender in Forum State. 34 A.L.R.6th 171.

CASE NOTES

Analysis

Requirement to Register.
Sentence.

Requirement to Register.

Defendant was properly convicted of knowingly failing to register as a sex offender under 18 U.S.C.S. § 2250 because he was subject to the registration requirements under Haw. Rev. Stat. § 846E-2(a) upon his Hawaii sex offense conviction and he had a duty to re-register when he re-entered Arkansas pursuant to § 12-12-905 and this section. United States v. Brewer, 628 F.3d 975 (8th Cir. 2010).

Sentence.

Circuit court did not err by denying defendant's motion to dismiss the state's petition to revoke the suspended sentence he received for failure to comply with the reporting requirements of this section, because defendant did not receive an illegal sentence; by pleading guilty, defendant admitted that he was required to register as a sex offender under the Act by virtue of his conviction for rape in California, and that defendant could have asserted a defense to the charge did not call into question the circuit court's authority to preside over the criminal matter, to accept his plea of guilty, and to sentence appellant accordingly. Wicks v. State, 2010 Ark. App. 499, — S.W.3d — (2010).

12-12-908. Registration format — Requirements.

(a) The Director of the Arkansas Crime Information Center shall prepare the format for registration as required in subsection (b) of this section and shall provide instructions for registration to each organized full-time municipal police department, county sheriff's office, the Department of Correction, the Department of Community Correction, the

Department of Human Services, and the Administrative Office of the Courts.

(b) The registration file required by this subchapter shall include:

(1) The sex offender's full name and all aliases that the sex offender has used or under which the sex offender has been known;

(2) Date of birth;

(3) Sex;

(4) Race;

(5) Height;

(6) Weight;

(7) Hair and eye color;

(8) Address of any temporary residence;

(9) Anticipated address of legal residence;

(10) Driver's license number or state identification number, if available;

(11) Social security number;

(12) Place of employment, education, or training;

(13) Photograph, if not already obtained;

(14) Fingerprints, if not already obtained;

(15) Date of arrest, arresting agency, offense for which convicted or acquitted, and arrest tracking number for each adjudication of guilt or acquittal on the grounds of mental disease or defect;

(16) A brief description of the crime or crimes for which registration is required;

(17) The registration status of the sex offender as a sexually violent predator, aggravated sex offender, or sex offender;

(18) A statement in writing signed by the sex offender acknowledging that the sex offender has been advised of the duty to register imposed by this subchapter;

(19) All computers or other devices with Internet capability to which the sex offender has access;

(20) All email addresses used by the sex offender;

(21) All user names, screen names, or instant message names that are used by the sex offender to communicate in real time with another person using the Internet; and

(22) Any other information that the center deems necessary, including without limitation:

(A) Criminal and corrections records;

(B) Nonprivileged personnel records;

(C) Treatment and abuse registry records; and

(D) Evidentiary genetic markers.

(c) Certain information such as social security number, driver's license number, employer, email addresses, user names, screen names, or instant message names, information that may lead to identification of the victim, and other similar information may be excluded from the information that is released during the course of notification.

History. Acts 1997, No. 989, § 7; 1999, No. 1353, § 6; 2001, No. 1743, § 7; 2011, No. 143, § 1[3].

A.C.R.C. Notes. As enacted, Acts 2011, No. 143, contained two sections designated as § 1.

Amendments. The 2011 amendment inserted (b)(19) through (21) and redesignated the remaining subdivisions accordingly; and, in (c), inserted "email addresses, user names, screen names, or instant message names" and substituted "other similar information" for "the like."

12-12-909. Verification form — Change of address.

(a)(1) A person required to register as a sex offender shall verify registration every six (6) months after the person's initial registration date during the period of time in which the person is required to register.

(2)(A)(i) The verification shall be done in person at a local law enforcement agency having jurisdiction at which time the person shall sign and date a Sex Offender Acknowledgment Form in which a law enforcement officer shall also witness and sign.

(ii) The Sex Offender Acknowledgment Form shall state the date of verification as well as a date certain that the person is required to return in person to a specific local law enforcement agency having jurisdiction to verify his or her address.

(B) The Sex Offender Acknowledgement Form shall be uniform and created by the Arkansas Crime Information Center.

(C) The local law enforcement agency having jurisdiction shall file the verification of registration electronically with the center.

(3) If the person lives in a jurisdiction that does not have a local law enforcement agency having jurisdiction that is able to electronically file the verification, the verification shall be done by certified mail in the following manner:

(A) The center shall mail a nonforwardable verification form to the last reported address of the person by certified mail;

(B)(i) The person shall return the verification form in person to the local law enforcement agency having jurisdiction within ten (10) days after receipt of the verification form.

(ii) Within three (3) days after receipt of the verification form, the local law enforcement agency having jurisdiction shall forward the verification form to the center;

(C) The verification form shall be signed by the person and state that the person still resides at the address last reported to the center; and

(D) If the person fails to return the verification form to the local law enforcement agency having jurisdiction within ten (10) days after receipt of the verification form, the person is in violation of this subchapter.

(4) If the person changes his or her address without notice or fails to return the verification form if he or she is allowed to do so by mail, notification shall be sent to law enforcement and supervising parole or probation authorities, and notice may be posted on the Internet until proper reporting is again established or the person is incarcerated.

(5) Subdivision (a)(1) of this section applies to a person required to

register as a sexually violent predator, except that the person shall verify the registration every ninety (90) days after the date of the initial release or commencement of parole.

(b)(1)(A) Before a change of address within the state, a sex offender shall report the change of address to the local law enforcement agency having jurisdiction no later than ten (10) days before the sex offender establishes residency or is temporarily domiciled at the new address.

(B) Upon receipt of a report of a change of address as described in subdivision (b)(1)(A) of this section, the local law enforcement agency having jurisdiction shall report the change of address to the center.

(2) When a change of address within the state is reported to the center, the center shall immediately report the change of address to the local law enforcement agency having jurisdiction where the sex offender expects to reside.

(c)(1) Before a change of address to another state, a sex offender shall register the new address with the center and with a designated law enforcement agency in the state to which the sex offender moves not later than ten (10) days before the sex offender establishes residence or is temporarily domiciled in the new state if the new state has a registration requirement.

(2) When a change of address to another state is reported to the center, the center shall immediately notify the law enforcement agency with which the sex offender must register in the new state if the new state has a registration requirement.

(d) The center may require a sex offender to report a change of address through the local law enforcement agency having jurisdiction.

History. Acts 1997, No. 989, § 8; 2001, No. 1743, § 8; 2007, No. 394, § 6; 2011, No. 64, § 1.

Amendments. The 2011 amendment rewrote (a); added (b)(1)(B); substituted "local law enforcement having jurisdiction" for "the center" in (b)(1)(A); and, in (c)(1), substituted "sex offender" for "person" and "the sex offender" for "such person."

12-12-910. Fine.

(a) The sentencing court shall assess at the time of sentencing a mandatory fine of two hundred fifty dollars ($250) on any person who is required to register under this subchapter.

(b) The fine provided in subsection (a) of this section and collected in circuit court, district court, or city court shall be remitted by the tenth day of each month to the Administration of Justice Fund Section of the Office of Administrative Services of the Department of Finance and Administration on a form provided by that office for deposit into the Sex and Child Offenders Registration Fund as established by § 12-12-911.

History. Acts 1997, No. 989, § 9; 2003, No. 1765, § 4; 2011, No. 812, § 1.

Amendments. The 2011 amendment deleted "Unless finding that undue hardship would result" at the beginning of (a).

12-12-913. Disclosure.

CASE NOTES

Sufficiency of Evidence.

Under this section and §§ 12-12-917 and 12-12-922, the evidence supported the sex offender's Level 2 assessment where his victim was outside the home and a Level 1 assessment only required notification inside the home and to local law enforcement, which was insufficient; the offender also indicated refusal to participate in sex-offender treatment. Gwaltney v. Sex Offender Assessment Comm., 2009 Ark. App. 668, — S.W.3d — (2009).

12-12-917. Evaluation protocol — Sexually violent predators — Juveniles adjudicated delinquent — Examiners.

CASE NOTES

Substantial Evidence.

Under this section and §§ 12-12-913 and 12-12-922, the evidence supported the sex offender's Level 2 assessment where his victim was outside the home and a Level 1 assessment only required notification inside the home and to local law enforcement, which was insufficient; the offender also indicated refusal to participate in sex-offender treatment. Gwaltney v. Sex Offender Assessment Comm., 2009 Ark. App. 668, — S.W.3d — (2009).

12-12-922. Alternative procedure for sexually violent predator evaluations — Administrative review of assigned risk level.

(a)(1) The alternative procedure under this section may be used for sexually violent predator evaluations if information that was not available to the court at the time of trial emerges in the course of a sex offender evaluation.

(2)(A) Examiners qualified by the Sex Offender Assessment Committee shall include in the assessment of any sex offender convicted of a sex offense a review as to whether the frequency, repetition over time, severity of trauma to the victim, or established pattern of predatory behaviors suggests that the sex offender is likely to engage in future predatory sexual offenses.

(B) If a mental abnormality or personality disorder is suspected, a licensed psychologist or psychiatrist qualified by the committee may conduct further assessment to determine the presence or absence of a mental abnormality or personality disorder.

(C) If further assessment under subdivision (a)(2)(B) of this section is conducted by a licensed psychologist or psychiatrist qualified by the committee, the report of the further assessment shall be presented to the committee.

(b)(1)(A) A sex offender may challenge an assigned risk level by submitting a written request for an administrative review.

(B) As part of the request for an administrative review, the sex offender may request in writing copies of all documents generated by the examiners, a listing by document name and source of all docu-

ments that may be available from other agencies having custody of those documents, and a copy of the tape of the interview.

(2) The request for an administrative review shall be made in accordance with instructions provided on the risk level notification and within fifteen (15) days of receipt of the advisement of risk level notification to the sex offender by certified mail and first-class mail.

(3)(A) The basis of the request for administrative review shall be clearly stated and any documentary evidence attached.

(B) The basis for administrative review is:

(i) The rules and procedures were not properly followed in reaching a decision on the risk level of the sex offender;

(ii) Documents or information not available at the time of assessment have a bearing on the risk that the sex offender poses to the community; or

(iii) The assessment is not supported by substantial evidence.

(4) Unless a request for an administrative review is received by the committee within twenty (20) days of postmark of the advisement of risk level notification sent to the sex offender sent by certified mail and first-class mail or delivered by personal service, an offender fact sheet shall be made available to law enforcement so that community notification may commence. Receipt of the advisement of risk level notification will be presumed within five (5) days of postmark of the advisement of risk level notification by both certified mail and first-class mail.

(5) If a request for an administrative review is received by the committee, the local law enforcement agency having jurisdiction may make community notification at the level upon which review has been requested.

(6)(A) A member of the committee shall conduct the review and respond within thirty (30) days of receiving a request for an administrative review.

(B) If additional time is needed to obtain facts, the committee shall notify the sex offender requesting the review.

(7)(A)(i) The findings of the administrative review shall be sent to the sex offender by certified mail. Community notification at the risk level assigned in the administrative review shall commence five (5) calendar days after the postmark of the advisement of the findings of the administrative review.

(ii) Upon receipt of the findings, the sex offender has thirty (30) days to file a petition under the Arkansas Administrative Procedure Act, § 25-15-201 et seq., for judicial review in the Pulaski County Circuit Court or in the circuit court of the county where the sex offender resides or does business.

(B) The circuit court shall refuse to hear any appeal of an assigned risk level by a sex offender unless the circuit court finds that the administrative remedies available to the sex offender under this subsection have been exhausted.

(8)(A)(i) A copy of the petition for judicial review shall be served on the executive secretary of the committee in accordance with the Arkansas Rules of Civil Procedure.

(ii) When the petition for judicial review has been served on the executive secretary of the committee, a record of the committee's findings and copies of all records in its possession shall be furnished by the committee to the circuit court within thirty (30) days of service.

(B) The committee may ask the circuit court to seal statements of victims, medical records, and other items that could place third parties at risk of harm.

(9) A ruling by the circuit court on the petition for judicial review is considered a final judgment.

History. Acts 2003 (2nd Ex. Sess.), No. 21, § 12; 2005, No. 1962, § 39; 2006 (1st Ex. Sess.), No. 4, § 6; 2007, No. 394, § 10; 2011, No. 286, § 1.

Amendments. The 2011 amendment, in (b)(5), substituted "the local enforcement agency having jurisdiction" for "law enforcement" and "at the level upon which" for "only at the level immediately below the level upon which."

CASE NOTES

Procedure.

Under §§ 12-12-913 and 12-12-917, and this section, the evidence supported the sex offender's Level 2 assessment where his victim was outside the home and a Level 1 assessment only required notification inside the home and to local law enforcement, which was insufficient; the offender also indicated refusal to participate in sex-offender treatment. Gwaltney v. Sex Offender Assessment Comm., 2009 Ark. App. 668, — S.W.3d — (2009).

12-12-924. Disclosure and notification concerning out-of-state sex offenders moving into Arkansas.

(a) A local law enforcement agency having jurisdiction where an out-of-state sex offender is moving or has moved may make immediate disclosure of the sex offender's registration in another state before the completion of a sex offender assessment assigning a community notification level.

(b) A local law enforcement agency having jurisdiction where an out-of-state individual is moving or has moved who has been convicted of an offense that would require registration as a sex offender in Arkansas may make immediate notification appropriate for public safety before the completion of a sex offender assessment assigning a community notification level.

History. Acts 2011, No. 100, § 1.

Subchapter 10 — Criminal History Information and Reporting Standards

SECTION.

Effective Dates. Acts 2011, No. 699, § 2: Mar. 24, 2011. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that Juli's law is intended to protect Arkansans from heinous crimes; that rape is a heinous crime that can occur at any time; that the protections under Juli's Law will be enhanced by the addition of rape as a reportable crime; and because no time should be lost in providing this protection to the people of Arkansas. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

12-12-1002. Penalties.

(a) Upon conviction, any criminal justice agency or official subject to fingerprinting or reporting requirements under this subchapter that knowingly fails to comply with such reporting requirements is guilty of a Class B misdemeanor.

(b) A person is guilty of a Class A misdemeanor upon conviction if the person:

(1) Knowingly accesses information or willfully obtains information collected and maintained under this subchapter for a purpose not specified by this subchapter; or

(2) Knowingly releases or discloses information maintained under this subchapter to another person who lacks authority to receive the information.

(c) A person is guilty of a Class D felony upon conviction if the person violates subsection (a) of this section for the purpose of:

(1) Furthering the commission of a misdemeanor offense or felony offense by the person or another person;

(2) Enhancing or assisting a person's position in a legal proceeding in this state or influencing the outcome of a legal proceeding in this state for the benefit of the person or a member of the person's family;

(3) Causing a pecuniary or professional gain for the person or a member of the person's family; or

(4) Political purposes for the person or a member of the person's family.

(d) A person convicted of violating subsection (c) of this section is subject to an additional fine of not more than five hundred thousand dollars ($500,000).

History. Acts 1993, No. 1109, § 15; 2009, No. 974, § 3; 2011, No. 1224, § 2.

A.C.R.C. Notes. Acts 2011, No. 1224, § 3, provided: "The provisions of this act shall not be retroactive."

Amendments. The 2011 amendment rewrote (b)(1); inserted (b)(2) and (c); redesignated former (b)(2) as present (d); and substituted "subsection (c)" for "subdivision (b)(1)" in (d).

12-12-1006. Fingerprinting, DNA sample collection, and photographing.

(a)(1) Immediately following an arrest for an offense, a law enforcement official at the receiving criminal detention facility shall take, or cause to be taken, the fingerprints and a photograph of the arrested person if the offense is a felony or a Class A misdemeanor.

(2) In addition to the requirements of subdivision (a)(1) of this section, a law enforcement official at the receiving criminal detention facility shall take or cause to be taken a DNA sample of a person arrested for:

(A) Capital murder, § 5-10-101;

(B) Murder in the first degree, § 5-10-102;

(C) Kidnapping, § 5-11-102;

(D) Rape, § 5-14-103;

(E) Sexual assault in the first degree, § 5-14-124; or

(F) Sexual assault in the second degree, § 5-14-125.

(b)(1) When the first appearance of a defendant in court is caused by a citation or summons for an offense, a law enforcement official at the receiving criminal detention facility shall take, or cause to be taken, the fingerprints and a photograph of the arrested person when the offense is a felony or a Class A misdemeanor.

(2) In addition to the requirements of subdivision (b)(1) of this section, if the first appearance of a defendant in court is caused by a citation or summons for a felony offense enumerated in subdivision (a)(2) of this section, the court immediately shall order and a law enforcement officer shall take or cause to be taken a DNA sample of the arrested person.

(c)(1) When felony or Class A misdemeanor charges are brought against a person already in the custody of a law enforcement agency or correctional agency and the charges are separate from the charges for which the person was previously arrested or confined, the law enforcement agency or the correctional agency shall again take the fingerprints and photograph of the person in connection with the new charges.

(2) In addition to the requirements of subdivision (c)(1) of this section, when a felony charge enumerated in subdivision (a)(2) of this section is brought against a person already in the custody of a law enforcement agency or a correctional agency and the felony charge is separate from the charge or charges for which the person was previously arrested or confined, the law enforcement agency or the correctional agency shall take or cause to be taken a DNA sample of the person in connection with the new felony charge unless the law enforcement agency or the correctional agency can verify that the person's DNA record is stored in the State DNA Data Base or CODIS.

(d)(1) When a defendant pleads guilty or nolo contendere to or is found guilty of any felony or Class A misdemeanor charge, the court shall order that the defendant be immediately fingerprinted and photographed by the appropriate law enforcement official.

(2) In addition to the requirements of subdivision (d)(1) of this section, if a defendant pleads guilty or nolo contendere to or is found guilty of a felony charge enumerated in subdivision (a)(2) of this section, the court shall order that the defendant provide a DNA sample to the appropriate law enforcement official unless the appropriate law enforcement official can verify that the defendant's DNA record is stored in the State DNA Data Base or CODIS.

(e)(1) Fingerprints or photographs taken after arrest or court appearance under subsections (a) and (b) of this section or taken from persons already in custody under subsection (c) of this section shall be forwarded to the Identification Bureau of the Department of Arkansas State Police within forty-eight (48) hours after the arrest or court appearance.

(2) Fingerprints or photographs taken under subsection (d) of this section shall be forwarded to the Identification Bureau by the fingerprinting official within five (5) working days after the plea or finding of guilt.

(f) Fingerprint cards or fingerprint images may be retained by the Identification Bureau, and criminal history information may be retained by the central repository for any criminal offense.

(g)(1) A DNA sample provided under this section shall be delivered to the State Crime Laboratory by a law enforcement officer at the law enforcement agency that took the sample in accordance with rules promulgated by the State Crime Laboratory.

(2) A DNA sample taken under this section shall be retained in the State DNA Data Bank established under § 12-12-1106.

(h) A DNA sample provided under this section shall be taken in accordance with rules promulgated by the State Crime Laboratory in consultation with the Department of Arkansas State Police and the Department of Health.

(i) Refusal to be fingerprinted or photographed or refusal to provide a DNA sample as required by this subchapter is a Class B misdemeanor.

(j)(1) A person authorized by this section to take a DNA sample is not criminally liable for taking a DNA sample under this subchapter if he or she takes the DNA sample in good faith and uses reasonable force.

(2) A person authorized by this section to take a DNA sample is not civilly liable for taking a DNA sample if the person acted in good faith, in a reasonable manner, using reasonable force, and according to generally accepted medical and other professional practices.

(k)(1) An authorized law enforcement agency or an authorized correctional agency may employ reasonable force if an individual refuses to submit to a taking of a DNA sample authorized under this subchapter.

(2) An employee of an authorized law enforcement agency or an authorized correctional agency is not criminally or civilly liable for the use of reasonable force described in subdivision (k)(1) of this section.

(l) A person less than eighteen (18) years of age is exempt from all provisions of this section regarding the collection of a DNA sample

unless that person is charged by the prosecuting attorney as an adult in circuit court or pleads guilty or nolo contendere to or is found guilty of a felony offense in circuit court.

History. Acts 1993, No. 1109, § 5; 1997, No. 826, § 5; 1997, No. 1231, § 1; 2001, No. 177, § 2; 2001, No. 1712, § 2; 2009, No. 974, § 6; 2011, No. 699, § 1.

Amendments. The 2011 amendment inserted (a)(2)(D) and redesignated the remaining subdivisions accordingly.

Subchapter 11 — State Convicted Offender DNA Data Base Act

12-12-1105. State DNA Data Base.

History. Acts 1997, No. 737, § 5; 2003, No. 1470, § 3; 2009, No. 974, § 11.

Publisher's Notes. This History is being set out to reflect a correction in the 2009 bound volume.

Subchapter 12 — Victim Notification System

SECTION.
12-12-1202. Information provided.

12-12-1202. Information provided.

(a) A victim notification may be accomplished by means of the computerized victim notification system established under § 12-12-1201 if pursuant to:

(1) Section 12-29-114, pertaining to escape;

(2) Section 16-21-106, pertaining to assistance to victims and witnesses of crimes;

(3) Section 16-93-204, pertaining to executive clemency;

(4) Section 16-93-615, pertaining to transfer hearings;

(5) Section 16-93-702, pertaining to parole; or

(6) Section 16-97-102, pertaining to sentencing.

(b) The computerized victim notification system established under § 12-12-1201 shall also include information about an inmate's custody status in regard to furloughs, work release, and community correction programs.

History. Acts 1997, No. 1250, § 2; 2005, No. 1962, § 44; 2011, No. 570, § 72.

A.C.R.C. Notes. Acts 2011, No. 570, § 1, provided: "Legislative intent. The intent of this act is to implement comprehensive measures designed to reduce recidivism, hold offenders accountable, and contain correction costs."

Amendments. The 2011 amendment substituted "16-93-615" for "16-93-206" in (a)(4).

Subchapter 14 — Task Force on Racial Profiling

SECTION.
12-12-1404. Training.

A.C.R.C. Notes. Acts 2009, No. 1458, § 12, provided: "Task Force on Racial Profiling established.

"(a)(1) The task forces created by Acts 2003, No. 1207, and Acts 2005, No. 2136, expired, respectively, on December 31, 2004, and December 31, 2006. Since additional work by a task force is needed, there is created a task force, consisting of thirteen (13) members, to be known as the 'Task Force on Racial Profiling'.

"(2) The Governor shall appoint the members as follows:

"(A) Four (4) members shall be active or retired law enforcement officers or prosecuting attorneys;

"(B) Three (3) members shall be associated with civil rights or community organizations;

"(C) Two (2) members shall be lawyers practicing substantially in the field of criminal defense; and

"(D) Four (4) members shall be citizen representatives.

"(b)(1) Within thirty (30) days after all members are appointed, the members shall meet to organize at a time and place determined by the Governor.

"(2) The task force shall select a member to serve as chair each year.

"(3) The task force shall meet as necessary to carry out its duties under this act and at the call of the chair.

"(c) There shall be no compensation for the members of the task force, though each member may receive expense reimbursement in accordance with Arkansas Code § 25-16-902 to the extent funds are available.

"(d) General staff support and operating assistance for the task force may be provided by the Bureau of Legislative Research.

"(e) The task force shall:

"(1) Monitor implementation and compliance with § 12-12-1401 et seq., and reforms enacted by the Eighty-Seventh General Assembly;

"(2) Serve in an advisory capacity to the Director of the Department of Arkansas State Police and the State Board of Education regarding the public education and awareness campaigns on racial profiling;

"(3) Study the effectiveness and feasibility of a racial profiling data collection requirement in the State of Arkansas;

"(4) Work with law enforcement agencies and civil rights advocates to determine an effective and appropriate penalty for violating the prohibition on racial profiling;

"(5) Compile an annual report of all complaints and investigations regarding racial profiling and provide the report to the Governor, Legislative Council, and Arkansas Legislative Black Caucus of the General Assembly;

"(6) Report its findings and recommendations to the Governor and Legislative Council before December 31, 2011; and

"(7) Facilitates an annual symposium on racial profiling for the Governor's office, Arkansas Legislative Black Caucus of the General Assembly, Department of Arkansas State Police and other interested persons to:

"(A) Serve as a forum for dialogue to promote awareness and understanding of racial profiling between the public, law enforcement agencies, and other government agencies;

"(B) Disseminate information and materials about the best practices toward combating misinformation and prejudice;

"(C) Provide assistance to community leaders and law enforcement agencies in the fight against racial profiling; and

"(D) Advocate and promote a state policy agenda that establishes the best practices for addressing racial profiling.

"(f) The task force shall expire on June 30, 2012."

12-12-1401. Definition.

CASE NOTES

Construction.

Police officer engaged in racial profiling prohibited by state statute, the state constitution, the U.S. Constitution, and the city's written policy and the officer also illegally seized one of the plaintiffs,

thereby violating U.S. Const., Amend. IV and the state constitution; the police chief, who supervised the officer and ran the police department, was deliberately indifferent to ongoing and systemic racial profiling of which he was aware and municipal liability was imposed on the city as it permitted the officer to establish and to carry out a custom and practice of engaging in racial profiling. The officer's true objective was not to enforce traffic laws prohibiting people from driving with their vision obstructed or other minor infractions; rather, the neutral traffic laws were used as a pretext for harassing Hispanics (whether here legally or illegally), for obtaining money through fines and towing charges for the financially troubled city, and to provide an incentive for Hispanics to move out of the area—clearly illegitimate objectives. Giron v. City of Alexander, 693 F. Supp. 2d 904 (E.D. Ark. 2010).

12-12-1402. Prohibition on racial profiling.

CASE NOTES

Construction.

Police officer engaged in racial profiling prohibited by state statute, the state constitution, the U.S. Constitution, and the city's written policy and the officer also illegally seized one of the plaintiffs, thereby violating U.S. Const., Amend. IV and the state constitution; the police chief, who supervised the officer and ran the police department, was deliberately indifferent to ongoing and systemic racial profiling of which he was aware and municipal liability was imposed on the city as it permitted the officer to establish and to carry out a custom and practice of engaging in racial profiling. The officer's true objective was not to enforce traffic laws prohibiting people from driving with their vision obstructed or other minor infractions; rather, the neutral traffic laws were used as a pretext for harassing Hispanics (whether here legally or illegally), for obtaining money through fines and towing charges for the financially troubled city, and to provide an incentive for Hispanics to move out of the area—clearly illegitimate objectives. Giron v. City of Alexander, 693 F. Supp. 2d 904 (E.D. Ark. 2010).

12-12-1403. Policies.

CASE NOTES

Cited: Giron v. City of Alexander, 693 F. Supp. 2d 904 (E.D. Ark. 2010).

12-12-1404. Training.

(a) Each law enforcement agency shall provide annual training to all officers that:

(1) Emphasizes the prohibition against racial profiling;

(2) Ensures that operating procedures adequately implement the prohibition against racial profiling and that the law enforcement agency's law enforcement personnel have copies of, understand, and follow the operating procedures; and

(3) Includes foreign language instruction, if possible, to ensure adequate communication with residents of a community.

(b) The course or courses of instruction and the guidelines shall stress understanding and respect for racial, ethnic, national, religious,

and cultural differences and development of effective and appropriate methods of carrying out law enforcement duties.

(c)(1) The Arkansas Commission on Law Enforcement Standards and Training shall adopt an initial training module concerning diversity and racial sensitivity for recruits and officers.

(2) The commission shall also adopt a training module for biennial recertification for all recruits and officers who have completed the initial training module.

(d)(1) By January 1, 2006, the commission shall promulgate rules that will set significant standards for all training required in this section.

(2) The commission may make additions, amendments, changes, or alterations to the rules in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(3) The commission may review and recommend changes to the racial profiling policy of any law enforcement agency.

(4) Upon request, the racial profiling policy of any law enforcement agency shall be made available to the commission for the purpose described in subdivision (d)(3) of this section.

(5) The commission may establish a toll-free hotline and an email address to receive complaints concerning racial profiling.

History. Acts 2003, No. 1207, § 4; 2005, No. 2136, § 5; 2011, No. 779, § 11.

Amendments. The 2011 amendment deleted former (c)(2) and redesignated the remaining subdivisions accordingly.

Subchapter 16 — Criminal History for Volunteers Act

SECTION.

12-12-1603. Definitions.

As used in this subchapter:

(1) "Children" means individuals under sixteen (16) years of age;

(2) "Conviction" means that an individual has been found guilty of or has pleaded guilty or nolo contendere to any offense by any court in the State of Arkansas or of any similar offense by a court in another state or a federal court regardless of whether the conviction has been sealed or expunged;

(3) "Criminal history information" means a record compiled by the Arkansas Crime Information Center or the Identification Bureau of the Department of Arkansas State Police on an individual;

(4) "Domestic abuse" means the same as defined in § 9-4-102;

(5) "Elderly" means individuals sixty-five (65) years of age or older;

(6) "Employee" means an individual currently in the service of an employer for full-time or part-time compensation and employed by contract or at will, in which the employer has the authority to control

the individual in the material details of how work shall be performed and when compensation shall be provided;

(7) "Individuals with disabilities" means mentally ill or developmentally disabled individuals with physical or mental impairments that substantially limit one (1) or more of the major life activities of the individual;

(8) "Volunteer" means an individual who provides services involving contact with children, the elderly, victims of domestic abuse, or individuals with disabilities without an express or implied promise of compensation; and

(9) "Volunteer organization" means an individual, group of individuals, association, partnership, corporation, limited liability company or partnership, business, or other entity that has volunteers who provide services to children, the elderly, victims of domestic abuse, or individuals with disabilities.

History. Acts 2005, No. 1778, § 1; 2011, No. 779, § 12.

Amendments. The 2011 amendment inserted "victims of domestic abuse" in (8).

12-12-1608. Penalty.

The following acts are a Class A misdemeanor:

(1) Knowingly releasing or disclosing criminal history information to any unauthorized volunteer organization or person; or

(2) Obtaining criminal history information for a purpose not authorized by this subchapter.

History. Acts 2005, No. 1778, § 1; 2011, No. 779, § 13.

Amendments. The 2011 amendment substituted "criminal history" for "criminal background" in (1); and inserted "criminal history" in (2).

Subchapter 17 — Adult and Long-Term Care Facility Resident Maltreatment Act

12-12-1703. Definitions.

As used in this subchapter:

(1)(A) "Abuse" means with regard to any long-term care facility resident or any patient at the Arkansas State Hospital by a caregiver:

(i) Any intentional and unnecessary physical act that inflicts pain on or causes injury to an endangered person or an impaired person, excluding court-ordered medical care or medical care requested by the patient or long-term care facility resident or a person legally

authorized to make medical decisions on behalf of the patient or long-term care facility resident;

(ii) Any intentional act that a reasonable person would believe subjects an endangered person or an impaired person, regardless of age, ability to comprehend, or disability, to ridicule or psychological injury in a manner likely to provoke fear or alarm, excluding necessary care and treatment provided in accordance with generally recognized professional standards of care;

(iii) Any intentional threat that a reasonable person would find credible and nonfrivolous to inflict pain on or cause injury to an endangered person or an impaired person except in the course of medical treatment or for justifiable cause; or

(iv) Any willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain, or mental anguish.

(B) "Abuse" means with regard to any person who is not a long-term care facility resident or a patient at the Arkansas State Hospital:

(i) Any intentional and unnecessary physical act that inflicts pain on or causes injury to an endangered person or an impaired person;

(ii) Any intentional act that a reasonable person would believe subjects an endangered person or an impaired person, regardless of age, ability to comprehend, or disability, to ridicule or psychological injury in a manner likely to provoke fear or alarm; or

(iii) Any intentional threat that a reasonable person would find credible and nonfrivolous to inflict pain on or cause injury to an endangered person or an impaired person except in the course of medical treatment or for justifiable cause;

(2) "Adult maltreatment" means abuse, exploitation, neglect, or sexual abuse of an adult;

(3) "Caregiver" means any of the following that has the responsibility for the protection, care, or custody of an endangered person or an impaired person as a result of assuming the responsibility voluntarily, by contract, through employment, or by order of a court:

(A) A related person or an unrelated person;

(B) An owner, an agent, or a high managerial agent of a public or private organization; or

(C) A public or private organization;

(4) "Department" means the Department of Human Services;

(5) "Endangered person" means:

(A) A person eighteen (18) years of age or older who:

(i) Is found to be in a situation or condition that poses a danger to himself or herself; and

(ii) Demonstrates a lack of capacity to comprehend the nature and consequences of remaining in that situation or condition; or

(B) A long-term care facility resident or an Arkansas State Hospital resident who:

(i) Is found to be in a situation or condition that poses an imminent risk of death or serious bodily harm to the long-term care facility resident; and

(ii) Demonstrates a lack of capacity to comprehend the nature and consequences of remaining in that situation or condition;

(6) "Exploitation" means the:

(A) Illegal or unauthorized use or management of an endangered person's or an impaired person's funds, assets, or property;

(B) Use of an adult endangered person's or an adult impaired person's power of attorney or guardianship for the profit or advantage of one's own self or another;

(C) The fraudulent or otherwise illegal, unauthorized, or improper act or process of a person, including a caregiver or fiduciary, that uses the resources of an endangered person, impaired person, or long-term care facility resident for monetary or personal benefit, profit, or gain, or that results in depriving the endangered person, impaired person, or long-term care facility resident of rightful access to or use of benefits, resources, belongings, or assets; or

(D) Misappropriation of property of a long-term care facility resident, that is, the deliberate misplacement, exploitation, or wrongful, temporary, or permanent use of a long-term care facility resident's belongings or money without the long-term care facility resident's consent;

(7)(A) "Fiduciary" means a person or entity with the legal responsibility to:

(i) Make decisions on behalf of and for the benefit of another person; and

(ii) Act in good faith and with fairness.

(B) "Fiduciary" includes without limitation:

(i) A trustee;

(ii) A guardian;

(iii) A conservator;

(iv) An executor;

(v) An agent under financial power of attorney or health care power of attorney; or

(vi) A representative payee;

(8) "Imminent danger to health or safety" means a situation in which death or serious bodily harm could reasonably be expected to occur without intervention;

(9)(A) "Impaired person" means a person eighteen (18) years of age or older who as a result of mental or physical impairment is unable to protect himself or herself from abuse, sexual abuse, neglect, or exploitation.

(B) For purposes of this subchapter, a long-term care facility resident is presumed to be an impaired person;

(10) "Long-term care facility" means:

(A) A nursing home;

(B) A residential care facility;

(C) A post-acute head injury retraining and residential facility;

(D) An assisted living facility;

(E) An intermediate care facility for individuals with mental retardation; or

(F) Any facility that provides long-term medical or personal care;

(11) "Long-term care facility resident" means a person, regardless of age, living in a long-term care facility;

(12) "Long-term care facility resident maltreatment" means abuse, exploitation, neglect, or sexual abuse of a long-term care facility resident;

(13) "Maltreated adult" means an adult who has been abused, exploited, neglected, physically abused, or sexually abused;

(14) "Maltreated person" means a person, regardless of age, who has been abused, exploited, neglected, physically abused, or sexually abused;

(15) "Neglect" means:

(A) An act or omission by an endangered person or an impaired person, for example, self-neglect; or

(B) An act or omission by a caregiver responsible for the care and supervision of an endangered person or an impaired person constituting:

(i) Negligently failing to provide necessary treatment, rehabilitation, care, food, clothing, shelter, supervision, or medical services to an endangered person or an impaired person;

(ii) Negligently failing to report health problems or changes in health problems or changes in the health condition of an endangered person or an impaired person to the appropriate medical personnel;

(iii) Negligently failing to carry out a prescribed treatment plan; or

(iv) Negligently failing to provide goods or services to a long-term care facility resident necessary to avoid physical harm, mental anguish, or mental illness as defined in rules promulgated by the Office of Long-Term Care;

(16)(A) "Physical injury" means the impairment of a physical condition or the infliction of substantial pain on a person.

(B) If the person is an endangered person or an impaired person, there is a presumption that any physical injury resulted in the infliction of substantial pain;

(17) "Serious bodily harm" means sexual abuse, physical injury, or serious physical injury;

(18) "Serious physical injury" means physical injury to an endangered person or an impaired person that creates a substantial risk of death or that causes protracted disfigurement, protracted impairment of health, or loss or protracted impairment of the function of any bodily member or organ;

(19) "Sexual abuse" means deviate sexual activity, sexual contact, or sexual intercourse, as those terms are defined in § 5-14-101, with another person who is not the actor's spouse and who is incapable of consent because he or she is mentally defective, mentally incapacitated, or physically helpless; and

(20) "Subject of the report" means:

(A) The endangered person or impaired person;

(B) The adult's legal guardian;

(C) The natural or legal guardian of a long-term care facility resident under eighteen (18) years of age; and

(D) The offender.

History. Acts 2005, No. 1812, § 1; 2007, No. 283, § 7; 2007, No. 497, § 4; 2009, No. 165, §§ 9, 10; 2009, No. 525, § 1; 2011, No. 206, § 7.

Amendments. The 2011 amendment inserted "or an Arkansas State Hospital resident" in (5)(B).

12-12-1715. Subpoenas in administrative adjudications.

(a)(1)(A) In every case of adjudication before the Department of Human Services, an administrative law judge shall have the power to issue subpoenas for the attendance of witnesses, the production of documents, or both, upon request of any party to the adjudication.

(B) Requests for a subpoena shall be granted by the administrative law judge if the testimony or documents desired are considered necessary and material without being unduly repetitious of other available evidence.

(2) Each subpoena shall:

(A) State that the subpoena is issued in a proceeding pending before the department;

(B) Contain the title of the administrative adjudication; and

(C) Command each person to whom it is directed to appear and give testimony at the time and place therein specified.

(3) Subpoenas may require the production of documents including:

(A) Writings;

(B) Drawings;

(C) Graphs;

(D) Charts;

(E) Photographs;

(F) Recordings; and

(G) Other data compilations from which information can be obtained.

(4) The party who requested a subpoena shall be responsible for serving the subpoena in the manner provided by law.

(5) Return of service shall be recorded, and the record shall be retained in the adjudication case file.

(6)(A) The circuit court of Pulaski County or the circuit court of the county of residence of any person duly served with a subpoena issued under this section may enforce the subpoena.

(B) Enforcement shall be in the manner provided by law for the enforcement of subpoenas issued by a circuit court.

(b) Upon motion and a showing of good cause, the presiding official may issue orders quashing or limiting subpoenas based on a determination that:

(1) The person subpoenaed does not have relevant, admissible evidence;

(2) The information or records sought are irrelevant to the adjudication;

(3) The information or records sought are confidential and not subject to disclosure or to production under federal laws or regulations or state law;

(4) Compliance with the subpoena would result in undue burden or expense; or

(5) The evidence possessed by the person subpoenaed or the information or record sought is unduly repetitious of other available evidence.

(c) If any child served with a subpoena to be a witness in an administrative hearing is a party to an open dependency-neglect or family in need of services case, the child's attorney ad litem shall be provided a copy of the subpoena.

(d) [Repealed.]

History. Acts 2005, No. 1812, § 1; 2009, No. 525, § 3; 2011, No. 1139, § 1.

Amendments. The 2011 amendment deleted (d).

12-12-1717. Availability of founded reports of adult or long-term care facility resident maltreatment.

(a) A report made under this subchapter that is determined to be founded, as well as any other information obtained, including protected health information, and a report written or photograph taken concerning a founded report in the possession of the Department of Human Services shall be confidential and shall be made available only to:

(1) A physician who has before him or her an endangered person or an impaired person the physician reasonably believes may have been maltreated;

(2) A person authorized to place the adult in protective custody if the person:

(A) Has before him or her an adult the person reasonably believes may have been maltreated; and

(B) Requires the information to determine whether to place the adult in protective custody;

(3) An authorized agency having responsibility for the care or supervision of an endangered person or an impaired person;

(4) Any person who is the subject of a report or that person's legal guardian;

(5) A grand jury or court, if the grand jury or court determines that the information is necessary for the determination of an issue before the grand jury or court;

(6) A prosecuting attorney, law enforcement official, coroner, or the Attorney General or his or her designated investigator;

(7)(A) A mandated reporter who has made a report of suspected maltreatment.

(B) However, a mandated reporter shall receive the information only to the extent that he or she may be informed after completion and closure of the investigation whether:

(i) Legal action was taken;

(ii) Services were provided; or

(iii) No action was taken.

(C) No further information shall be released to a mandated reporter, and the mandated reporter shall be informed of the confidentiality of the information and the penalties for disclosure;

(8)(A) An employer or volunteer agency for the purpose of screening an employee, applicant, or volunteer upon submission of a signed, notarized release from the employee, applicant, or volunteer.

(B) The only information released to the employer or volunteer agency shall be whether or not the Adult and Long-term Care Facility Resident Maltreatment Central Registry contains any founded reports naming the employee, applicant, or volunteer as an offender;

(9) The Death Review Committee of the Department of Human Services;

(10) The current administrator of the long-term care facility, if the incident occurred in a long-term care facility;

(11) The administrator of the long-term care facility that currently employs the offender, if different from the long-term care facility in which the incident occurred;

(12) A person or provider identified by the department as having services needed by the maltreated person;

(13) Any applicable licensing or registering authority;

(14) Any employer, legal entity, or board responsible for the person named as the offender;

(15) Any legal entity or board responsible for the maltreated person;

(16) The Division of Developmental Disabilities Services and the Division of Aging and Adult Services as to participants of the waiver program; and

(17) A state or federal agency pursuing an official criminal records check.

(b)(1) Under no circumstances may the information contained in the registry be released to a person unless the person's capacity is confirmed by the department.

(2) Except for the subject of the report, no person or agency to whom disclosure is made may disclose to any other person a report or other information obtained under this section.

(c)(1) The department may not release data that would identify the person who made a report except to law enforcement, a prosecuting attorney, or the office of the Attorney General.

(2) A court of competent jurisdiction may order release of data that would identify the person who made a report after the court has reviewed in camera the record related to the report and has found that disclosure is needed:

(A) To prevent execution of a crime; or

(B) For prosecution of a crime.

(d) However, information contained in the registry may be made available to bona fide and approved research groups solely for the purpose of scientific research, but in no event shall the name of a person be released, nor shall specific circumstances or facts related to a specific person be used in any research report that might be identifiable with the person.

(e) A person who knowingly permits or encourages the release of data or information contained in the registry to a person not permitted by this subchapter to receive the data or information upon conviction is guilty of a Class A misdemeanor.

History. Acts 2005, No. 1812, § 1; 2007, No. 283, § 9; 2009, No. 165, § 11; 2011, No. 206, § 8.

Amendments. The 2011 amendment added (a)(17).

12-12-1722. Services available on investigative finding of true or unsubstantiated.

(a) If an investigation under this subchapter is determined to be true, the Department of Human Services may open a protective services case.

(b)(1) If the department opens a protective services case under this section, the department shall provide services to the endangered person or impaired person in an effort to prevent:

(A) Additional maltreatment to the endangered person or impaired person; or

(B) Removal of the endangered person or impaired person from the home.

(2) Services provided by the department shall be relevant to the needs of the endangered person or impaired person.

(c) If at any time during the protective services case the department determines that the endangered person or impaired person cannot safely remain at home, the department shall take steps to remove the endangered person or impaired person under custody under the Arkansas Adult Maltreatment Custody Act, § 9-20-101 et seq.

(d) Upon request, the department shall be provided a copy of the results of radiology procedures, videotapes, photographs, medical records, or financial records on an endangered person or impaired person if the department has an open protective services case.

(e) If the report of adult maltreatment is deemed unsubstantiated, the department may offer supportive services to the alleged endangered person or impaired person.

(f) An alleged endangered person or impaired person may accept or reject supportive services at any time.

History. Acts 2011, No. 206, § 9.

CHAPTER 14

STATE CAPITOL POLICE

12-14-106. Additional salary payments.

A.C.R.C. Notes. Acts 2011, No. 1098, § 19, provided: "STATE CAPITOL POLICE. In the event that sufficient revenues, in the judgment of the Secretary of State exist, the Secretary is hereby authorized to make additional salary payments from such funds to those employees who have attained law enforcement certification above the basic certificate level, as defined by the Arkansas Commission on Law Enforcement Standards. It is the intent of this Section that such payment shall be optional, at the discretion of the Secretary, dependent on sufficient revenues and shall not be implemented using funds specifically set aside for other programs within the Department.

"Employees shall be eligible for all or a portion of additional salary payments scheduled as follows:

"I. General Certificate — $ 300 annually

"II. Intermediate Certificate — $ 600 annually

"III. Advanced Certificate — $ 900 annually

"IV. Senior Certificate — $1,200 annually

"Payment of such funds may be made monthly, quarterly, semiannually or annually depending upon the availability of revenues and shall be restricted to the following classifications:

"1. Sec. of State Capitol Police Chief

"2. Sec. of State Police Sergeant

"3. Sec. of State Corporal

"4. Sec. of State Assistant Chief

"Payments made under this Section which are awarded as partial or lump sum payments shall not be considered as salary for purposes of retirement benefits but shall be subject to withholding of all applicable federal and state taxes. Payments made under this Section shall not be construed as exceeding the maximum annual salary of the employee.

"The provisions of this section shall be in effect only from July 1, 2011 through June 30, 2012."

CHAPTER 17

STATE DRUG CRIME ENFORCEMENT AND PROSECUTION GRANT FUND

SECTION.

12-17-106. Drug crime special assessment.

(a) There is hereby established a drug crime special assessment to be levied by the district courts or circuit courts of this state in the sum of one hundred twenty-five dollars ($125) against any person who is convicted of or enters a plea of guilty or nolo contendere to any felony or misdemeanor offense the court determines to be a drug crime.

(b) The drug crime special assessment shall be collected by the entity or office designated to collect fines and costs within the jurisdiction.

(c)(1) All drug crime special assessments collected shall be remitted by the county official, city official, agency, or department designated in § 16-13-709 as primarily responsible for the collection of fines assessed in the circuit courts, district courts, or city courts on or before the

fifteenth day of each month to the Administration of Justice Fund Section of the Office of Administrative Services of the Department of Finance and Administration, for deposit into the State Drug Crime Enforcement and Prosecution Grant Fund, as established by § 12-17-102.

(2) A form provided by the section identifying the amount of the drug crime special assessments shall be transmitted with the collected drug crime special assessments.

History. Acts 2007, No. 1086, § 1; 2009, No. 165, § 13; 2011, No. 779, § 14.

Amendments. The 2011 amendment inserted "drug crime" twice in (c)(2).

CHAPTER 18

CHILD MALTREATMENT ACT

SUBCHAPTER.

Subchapter 1 — General Provisions

SECTION.

12-18-102. Purpose.

The purpose of this chapter is to:

(1) Provide a system for the reporting of known or suspected child maltreatment;

(2) Ensure the immediate screening, safety assessment, and prompt investigation of reports of known or suspected child maltreatment;

(3) Ensure that immediate steps are taken to:

(A) Protect a maltreated child and any other child under the same care who may also be in danger of maltreatment; and

(B) Place a child whose health or physical well-being is in immediate danger in a safe environment;

(4) Provide immunity from criminal prosecution for an individual making a good faith report of suspected child maltreatment;

(5) Preserve the confidentiality of all records in order to protect the rights of the child and of the child's parents or guardians;

(6) Encourage the cooperation of state law enforcement officials, courts, and state agencies in the investigation, assessment, prosecution, and treatment of child maltreatment; and

(7) Stabilize the home environment if a child's health and safety are not at risk.

History. Acts 2009, No. 749, § 1; 2011, No. 1143, § 1.

Amendments. The 2011 amendment substituted "whose health or physical well-being is in immediate danger" for "who is in immediate danger of severe maltreatment" in (3)(B).

12-18-103. Definitions.

As used in this chapter:

(1)(A) "Abandonment" means:

(i) The failure of a parent to provide reasonable support and to maintain regular contact with a child through statement or contact when the failure is accompanied by an intention on the part of the parent to permit the condition to continue for an indefinite period in the future or the failure of a parent to support or maintain regular contact with a child without just cause; or

(ii) An articulated intent to forego parental responsibility.

(B) "Abandonment" does not include acts or omissions of a parent toward a married minor;

(2)(A) "Abuse" means any of the following acts or omissions by a parent, guardian, custodian, foster parent, person eighteen (18) years of age or older living in the home with a child whether related or unrelated to the child, or any person who is entrusted with the child's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, or any person legally responsible for the child's welfare, but excluding the spouse of a minor:

(i) Extreme or repeated cruelty to a child;

(ii) Engaging in conduct creating a realistic and serious threat of death, permanent or temporary disfigurement, or impairment of any bodily organ;

(iii) Injury to a child's intellectual, emotional, or psychological development as evidenced by observable and substantial impairment of the child's ability to function within the child's normal range of performance and behavior;

(iv) Any injury that is at variance with the history given;

(v) Any nonaccidental physical injury;

(vi) Any of the following intentional or knowing acts, with physical injury and without justifiable cause:

(a) Throwing, kicking, burning, biting, or cutting a child;

(b) Striking a child with a closed fist;

(c) Shaking a child; or

(d) Striking a child on the face or head; or

(vii) Any of the following intentional or knowing acts, with or without physical injury:

(a) Striking a child six (6) years of age or younger on the face or head;

(b) Shaking a child three (3) years of age or younger;

(c) Interfering with a child's breathing;

(d) Pinching, biting, or striking a child in the genital area;

(e) Tying a child to a fixed or heavy object or binding or tying a child's limbs together;

(f) Giving a child or permitting a child to consume or inhale a poisonous or noxious substance not prescribed by a physician that has the capacity to interfere with normal physiological functions;

(g) Giving a child or permitting a child to consume or inhale a substance not prescribed by a physician that has the capacity to alter the mood of the child, including, but not limited to, the following:

(1) Marijuana;

(2) Alcohol, excluding alcohol given to a child during a recognized and established religious ceremony or service;

(3) A narcotic; or

(4) An over-the-counter drug if a person purposely administers an overdose to a child or purposely gives an inappropriate over-the-counter drug to a child and the child is detrimentally impacted by the overdose or the over-the-counter drug;

(h) Exposing a child to a chemical that has the capacity to interfere with normal physiological functions, including, but not limited to, a chemical used or generated during the manufacture of methamphetamine; or

(i) Subjecting a child to Munchausen syndrome by proxy or a factitious illness by proxy if the incident is confirmed by medical personnel.

(B)(i) The list in subdivision (2)(A) of this section is illustrative of unreasonable action and is not intended to be exclusive.

(ii) No unreasonable action shall be construed to permit a finding of abuse without having established the elements of abuse.

(C)(i) "Abuse" does not include physical discipline of a child when it is reasonable and moderate and is inflicted by a parent or guardian for purposes of restraining or correcting the child.

(ii) "Abuse" does not include when a child suffers transient pain or minor temporary marks as the result of an appropriate restraint if:

(a) The person exercising the restraint is:

(1) An employee of a child welfare agency licensed or exempted from licensure under the Child Welfare Agency Licensing Act, § 9-28-401 et seq.; and

(2) Acting in his or her official capacity while on duty at a child welfare agency licensed or exempted from licensure under the Child Welfare Agency Licensing Act, § 9-28-401 et seq.;

(b) The agency has policy and procedures regarding restraints;

(c) No other alternative exists to control the child except for a restraint;

(d) The child is in danger or hurting himself or herself or others;

(e) The person exercising the restraint has been trained in properly restraining children, de-escalation, and conflict resolution techniques;

(f) The restraint is for a reasonable period of time; and

(g) The restraint is in conformity with training and agency policy and procedures.

(iii) Reasonable and moderate physical discipline inflicted by a parent or guardian does not include any act that is likely to cause and which does cause injury more serious than transient pain or minor temporary marks.

(iv) The age, size, and condition of the child and the location of the injury and the frequency or recurrence of injuries shall be considered when determining whether the physical discipline is reasonable or moderate;

(3) "Caretaker" means a parent, guardian, custodian, foster parent, or any person thirteen (13) years of age or older who is entrusted with a child's care by a parent, guardian, custodian, or foster parent, including without limitation, an agent or employee of a public or private residential home, child care facility, public or private school, or any person responsible for a child's welfare, but excluding the spouse of a minor;

(4)(A) "Central intake", otherwise referred to as the "Child Abuse Hotline", means a unit that shall be established by the Department of Human Services for the purpose of receiving and recording notification made pursuant to this chapter.

(B) The Child Abuse Hotline shall be staffed twenty-four (24) hours per day and shall have statewide accessibility through a toll-free telephone number;

(5) "Child" or "juvenile" means an individual who is from birth to eighteen (18) years of age;

(6) "Child maltreatment" means abuse, sexual abuse, neglect, sexual exploitation, or abandonment;

(7) "Department" means the Department of Human Services;

(8) "Deviate sexual activity" means any act of sexual gratification involving:

(A) Penetration, however slight, of the anus or mouth of one person by the penis of another person; or

(B) Penetration, however slight, of the labia majora or anus of one person by any body member or foreign instrument manipulated by another person;

(9)(A)(i) "Forcible compulsion" means physical force, intimidation, or a threat, express or implied, of physical injury to or death, rape, sexual abuse, or kidnapping of any person.

(ii) If the act was committed against the will of the child, then forcible compulsion has been used.

(B) The age, developmental stage, and stature of the victim and the relationship of the victim to the assailant, as well as the threat of

deprivation of affection, rights, and privileges from the victim by the assailant, shall be considered in weighing the sufficiency of the evidence to prove forcible compulsion;

(10) "Guardian" means any person, agency, or institution, as defined by § 28-65-101 et seq., whom a court of competent jurisdiction has so appointed;

(11) "Indecent exposure" means the exposure by a person of the person's sexual organs for the purpose of arousing or gratifying the sexual desire of the person or of any other person under circumstances in which the person knows the conduct is likely to cause affront or alarm;

(12) "Near fatality" means an act that, as certified by a physician, places the child in serious or critical condition;

(13)(A) "Neglect" means those acts or omissions of a parent, guardian, custodian, foster parent, or any person who is entrusted with the child's care by a parent, custodian, guardian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, or any person legally responsible under state law for the child's welfare, but excluding the spouse of a minor and the parents of the married minor, which constitute:

(i) Failure or refusal to prevent the abuse of the child when the person knows or has reasonable cause to know the child is or has been abused;

(ii) Failure or refusal to provide necessary food, clothing, shelter, and education required by law, excluding the failure to follow an individualized educational program, or medical treatment necessary for the child's well-being, except when the failure or refusal is caused primarily by the financial inability of the person legally responsible and no services for relief have been offered;

(iii) Failure to take reasonable action to protect the child from abandonment, abuse, sexual abuse, sexual exploitation, neglect, or parental unfitness when the existence of the condition was known or should have been known;

(iv) Failure or irremediable inability to provide for the essential and necessary physical, mental, or emotional needs of the child, including the failure to provide a shelter that does not pose a risk to the health or safety of the child;

(v) Failure to provide for the child's care and maintenance, proper or necessary support, or medical, surgical, or other necessary care;

(vi) Failure, although able, to assume responsibility for the care and custody of the child or to participate in a plan to assume such responsibility; or

(vii) Failure to appropriately supervise the child that results in the child's being left alone at an inappropriate age or in inappropriate circumstances creating a dangerous situation or a situation that puts the child at risk of harm.

(B)(i) "Neglect" shall also include:

(a) Causing a child to be born with an illegal substance present in the child's bodily fluids or bodily substances as a result of the pregnant mother's knowingly using an illegal substance before the birth of the child; or

(b) At the time of the birth of a child, the presence of an illegal substance in the mother's bodily fluids or bodily substances as a result of the pregnant mother's knowingly using an illegal substance before the birth of the child.

(ii) As used in this subdivision (13)(B), "illegal substance" means a drug that is prohibited to be used or possessed without a prescription under the Arkansas Criminal Code, § 5-1-101 et seq.

(iii) A test of the child's bodily fluids or bodily substances may be used as evidence to establish neglect under subdivision (13)(B)(i)(*a*) of this section.

(iv) A test of the mother's bodily fluids or bodily substances may be used as evidence to establish neglect under subdivision (13)(B)(i)(*b*) of this section;

(14) "Parent" means a biological mother, an adoptive parent, or a man to whom the biological mother was married at the time of conception or birth or who has been found by a court of competent jurisdiction to be the biological father of the child;

(15) "Pornography" means:

(A) Pictures, movies, or videos that lack serious literary, artistic, political, or scientific value and that, when taken as a whole and applying contemporary community standards, would appear to the average person to appeal to the prurient interest;

(B) Material that depicts sexual conduct in a patently offensive manner lacking serious literary, artistic, political, or scientific value; or

(C) Obscene or licentious material;

(16) "Serious bodily injury" means bodily injury that involves substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty;

(17) "Severe maltreatment" means sexual abuse, sexual exploitation, acts or omissions that may or do result in death, abuse involving the use of a deadly weapon as defined by § 5-1-102, bone fracture, internal injuries, burns, immersions, suffocation, abandonment, medical diagnosis of failure to thrive, or causing a substantial and observable change in the behavior or demeanor of the child;

(18) "Sexual abuse" means:

(A) By a person thirteen (13) years of age or older to a person younger than eighteen (18) years of age:

(i) Sexual intercourse, deviate sexual activity, or sexual contact by forcible compulsion;

(ii) Attempted sexual intercourse, deviate sexual activity, or sexual contact by forcible compulsion;

(iii) Indecent exposure; or

(iv) Forcing the watching of pornography or live sexual activity;

(B) By a person eighteen (18) years of age or older to a person not his or her spouse who is younger than fifteen (15) years of age:

(i) Sexual intercourse, deviate sexual activity, or sexual contact;

(ii) Attempted sexual intercourse, deviate sexual activity, or sexual contact; or

(iii) Solicitation of sexual intercourse, deviate sexual activity, or sexual contact;

(C) By a person twenty (20) years of age or older to a person not his or her spouse who is younger than sixteen (16) years of age:

(i) Sexual intercourse, deviate sexual activity, or sexual contact;

(ii) Attempted sexual intercourse, deviate sexual activity, or sexual contact; or

(iii) Solicitation of sexual intercourse, deviate sexual activity, or sexual contact;

(D) By a caretaker to a person younger than eighteen (18) years of age:

(i) Sexual intercourse, deviate sexual activity, or sexual contact;

(ii) Attempted sexual intercourse, deviate sexual activity, or sexual contact;

(iii) Forcing or encouraging the watching of pornography;

(iv) Forcing, permitting, or encouraging the watching of live sexual activity;

(v) Forcing the listening to a phone sex line; or

(vi) An act of voyeurism; or

(E) By a person younger than thirteen (13) years of age to a person younger than eighteen (18) years of age:

(i) Sexual intercourse, deviate sexual activity, or sexual contact by forcible compulsion; or

(ii) Attempted sexual intercourse, deviate sexual activity, or sexual contact by forcible compulsion;

(19)(A)(i) "Sexual contact" means any act of sexual gratification involving:

(a) The touching, directly or through clothing, of the sex organs, buttocks, or anus of a person or the breast of a female;

(b) The encouraging of a child to touch the offender in a sexual manner; or

(c) The offender requesting to touch a child in a sexual manner.

(ii) Evidence of sexual gratification may be inferred from the attendant circumstances surrounding the specific complaint of child maltreatment.

(B) "Sexual contact" does not include normal affectionate hugging;

(20) "Sexual exploitation" means:

(A) Allowing, permitting, or encouraging participation or depiction of the child in:

(i) Prostitution;

(ii) Obscene photography; or

(iii) Obscene filming; or

(B) Obscenely depicting, obscenely posing, or obscenely posturing a child for any use or purpose;

(21) "Subject of the report" means:

(A) The offender;

(B) The custodial and noncustodial parents, guardians, and legal custodians of the child who is subject to suspected maltreatment; and

(C) The child who is the subject of suspected maltreatment;

(22) "Underaged juvenile offender" means any child younger than thirteen (13) years of age for whom a report of sexual abuse has been determined to be true for sexual abuse to another child; and

(23) "Voyeurism" means looking, for the purpose of sexual arousal or gratification, into a private location or place in which a child may reasonably be expected to be nude or partially nude.

History. Acts 2009, No. 749, § 1; 2011, No. 779, §§ 15–17; 2011, No. 1143, §§ 2–5.

Amendments. The 2011 amendment by No. 779 substituted "or the failure of a parent to support" for "and support" in (1)(A)(i); rewrote (19)(B); and added "or" at the end of (20)(A)(ii).

The 2011 amendment by No. 1143 inserted (2)(C)(ii)(*a*)(2); substituted "thirteen (13) years of age" for "ten (10) years of age" in (3), the introductory language of (18)(A) and (18)(E), and (22); substituted "fifteen (15) years of age" for "sixteen (16) years of age" in the introductory language of (18)(B); inserted present (18)(B)(iii) and (18)(C) and redesignated the remaining subdivisions accordingly; and substituted "offender" for "aggressor" in (22).

CASE NOTES

Application

Child's testimony, by itself, that her stepmother picked her up by her neck, making it difficult to breathe, described treatment that fit within the definition of abuse under subdivision (2)(A)(vii)(*c*) of this section and was sufficient to support the Arkansas Department of Human Services' finding of maltreatment. Duke v. Selig, 2009 Ark. App. 843, — S.W.3d — (2009).

Subchapter 3 — Child Abuse Hotline

12-18-303. Minimum requirements for a report to be accepted.

(a) Except as otherwise provided in this section, the Child Abuse Hotline shall accept a report of child maltreatment or suspected child maltreatment if:

(1) The allegations, if true, would constitute child maltreatment as defined under this chapter;

(2) Sufficient identifying information is provided to identify and locate the child or the child's family; and

(3) The child or the child's family is present in Arkansas or the incident occurred in Arkansas.

(b)(1) If the alleged offender resides in another state and the incident occurred in another state or country, the Child Abuse Hotline shall document receipt of the report, transfer the report to the Child Abuse Hotline of the state or country where the alleged offender resides or the incident occurred, and, if child protection is an issue, forward the report to the Department of Human Services or the equivalent governmental agency of the state or country where the alleged offender resides.

(2) Any record of receipt of a report under subdivision (b)(1) of this section may be used only within the department for purposes of administration of the program and shall not be disclosed except to:

(A) The prosecuting attorney; or

(B) A law enforcement agency.

(3) Data identifying a reporter under subdivision (b)(1) of this section shall be maintained under § 12-18-502.

(c) If the incident occurred in Arkansas and the victim, offender, or victim's parents no longer reside in Arkansas, the Child Abuse Hotline shall accept the report and the Arkansas investigating agency shall contact the other state and request assistance in completing the investigation, including an interview with the out-of-state subject of the report.

(d)(1) If the Child Abuse Hotline receives a report and the alleged offender is a resident of the State of Arkansas and the report of child maltreatment or suspected child maltreatment in the state or country in which the act occurred would also be child maltreatment in Arkansas at the time the incident occurred, the Child Abuse Hotline shall refer the report to the appropriate investigating agency within the state so that the Arkansas investigative agency can investigate alone or in concert with the investigative agency of any other state or country that may be involved.

(2) The Arkansas investigating agency shall make an investigative determination and shall provide notice to the alleged offender that, if the allegation is determined to be true, the offender's name will be placed in the Child Maltreatment Central Registry.

(3) The other state may also conduct an investigation in this state that results in the offender's being named in a true report in that state and placed in the Child Maltreatment Central Registry of that state.

History. Acts 2009, No. 749, § 1; 2011, No. 1143, § 6.

Amendments. The 2011 amendment, in (b)(1), substituted "document receipt of" for "screen out," deleted "screened-out" following "forward the," and added "or the equivalent governmental agency of the state or country where the alleged offender resides"; and inserted (b)(2) and (b)(3).

12-18-308. Reports of injury to a child's intellectual, emotional, or psychological development.

The Child Abuse Hotline shall accept a report of injury to a child's intellectual, emotional, or psychological development as evidenced by observable and substantial impairment of the child's ability to function within the child's normal range of performance and behavior only if the reporter is:

(1) A medical or mental health professional;

(2) A school counselor, if the child did not disclose to the teacher;

(3) A teacher; or

(4) A day care center worker.

History. Acts 2009, No. 749, § 1; 2011, No. 784, § 1.

Amendments. The 2011 amendment inserted (2) and redesignated the remaining subdivisions accordingly.

12-18-309. Reports alleging that a child is dependent-neglected.

The Child Abuse Hotline shall accept telephone calls or other communications alleging that a child is a dependent-neglected juvenile, as defined in § 9-27-303(18), and shall immediately refer this information to the Department of Human Services.

History. Acts 2009, No. 749, § 1; 2011, No. 779, § 18.

Amendments. The 2011 amendment inserted "juvenile."

12-18-310. Referrals on children born with Fetal Alcohol Spectrum Disorder.

(a) All health care providers involved in the delivery or care of infants shall:

(1) Contact the Department of Human Services regarding an infant born and affected with a Fetal Alcohol Spectrum Disorder; and

(2) Share all pertinent information, including health information, with the department regarding an infant born and affected with a Fetal Alcohol Spectrum Disorder.

(b) The department shall accept referrals, calls, and other communications from health care providers involved in the delivery or care of infants born and affected with a Fetal Alcohol Spectrum Disorder.

(c) The department shall develop a plan of safe care for infants affected with a Fetal Alcohol Spectrum Disorder.

History. Acts 2011, No. 1143, § 7.

Subchapter 4 — Reporting Suspected Child Maltreatment

SECTION.

12-18-402. Mandated reporters.

(a) An individual listed as a mandated reporter under subsection (b) of this section shall immediately notify the Child Abuse Hotline if he or she:

(1) Has reasonable cause to suspect that a child has:

(A) Been subjected to child maltreatment; or

(B) Died as a result of child maltreatment; or

(2) Observes a child being subjected to conditions or circumstances that would reasonably result in child maltreatment.

(b) The following individuals are mandated reporters under this chapter:

(1) A child care worker or foster care worker;

(2) A coroner;

(3) A day care center worker;

(4) A dentist;

(5) A dental hygienist;

(6) A domestic abuse advocate;

(7) A domestic violence shelter employee;

(8) A domestic violence shelter volunteer;

(9) An employee of the Department of Human Services;

(10) An employee working under contract for the Division of Youth Services of the Department of Human Services;

(11) A foster parent;

(12) A judge;

(13) A law enforcement official;

(14) A licensed nurse;

(15) Medical personnel who may be engaged in the admission, examination, care, or treatment of persons;

(16) A mental health professional;

(17) An osteopath;

(18) A peace officer;

(19) A physician;

(20) A prosecuting attorney;

(21) A resident intern;

(22) A school counselor;

(23) A school official;

(24) A social worker;

(25) A surgeon;

(26) A teacher;

(27) A court-appointed special advocate program staff member or volunteer;

(28) A juvenile intake or probation officer;

(29) A clergy member, which includes a minister, priest, rabbi, accredited Christian Science practitioner, or other similar functionary of a religious organization, or an individual reasonably believed to be so by the person consulting him or her, except to the extent the clergy member:

(A) Has acquired knowledge of suspected child maltreatment through communications required to be kept confidential pursuant to the religious discipline of the relevant denomination or faith; or

(B) Received the knowledge of the suspected child maltreatment from the alleged offender in the context of a statement of admission;

(30) An employee of a child advocacy center or a child safety center;

(31) An attorney ad litem in the course of his or her duties as an attorney ad litem;

(32)(A) A sexual abuse advocate or sexual abuse volunteer who works with a victim of sexual abuse as an employee of a community-based victim service or mental health agency such as Safe Places, United Family Services, or Centers for Youth and Families.

(B) A sexual abuse advocate or sexual abuse volunteer includes a paid or volunteer sexual abuse advocate who is based with a local law enforcement agency;

(33) A rape crisis advocate or rape crisis volunteer;

(34)(A) A child abuse advocate or child abuse volunteer who works with a child victim of abuse or maltreatment as an employee of a community-based victim service or a mental health agency such as Safe Places, United Family Services, or Centers for Youth and Families.

(B) A child abuse advocate or child abuse volunteer includes a paid or volunteer sexual abuse advocate who is based with a local law enforcement agency;

(35) A victim/witness coordinator;

(36) A victim assistance professional or victim assistance volunteer; or

(37) An employee of the Crimes Against Children Division of the Department of Arkansas State Police.

(c)(1) A privilege or contract shall not prevent a person from reporting child maltreatment when he or she is a mandated reporter and required to report under this section.

(2) A school, Head Start program, or day care facility shall not prohibit an employee or a volunteer from directly reporting child maltreatment to the Child Abuse Hotline.

(3) A school, Head Start program, or day care facility shall not require an employee or a volunteer to obtain permission or notify any person, including an employee or a supervisor, before reporting child maltreatment to the Child Abuse Hotline.

History. Acts 2009, No. 749, § 1; 2009, No. 1409, § 1; 2011, No. 1143, § 8.

Amendments. The 2011 amendment added (b)(37).

Subchapter 5 — Notice Procedures After a Report of Suspected Child Maltreatment Has Been Made

SECTION.

12-18-503. Notification generally.

The Department of Human Services shall notify the following of any report of child maltreatment within five (5) business days:

(1) The legal parents, legal guardians, and current foster parent of a child in foster care who is named as a victim or alleged offender;

(2) The attorney ad litem for any child named as the victim or alleged offender;

(3) A person appointed by the court as the Court Appointed Special Advocate volunteer for any child named as the victim or alleged offender;

(4) Counsel in a dependency-neglect case or family in need of services case when the child is named as a victim or alleged offender;

(5) The attorney ad litem and Court Appointed Special Advocate volunteer for all other children in the same foster home if the child maltreatment occurred in a foster home;

(6) The attorney ad litem and court-appointed special advocate for any child in foster care when the alleged juvenile offender or underaged juvenile offender is placed in the same placement as the attorney ad litem or court-appointed special advocate's client;

(7) The responsible multidisciplinary team; and

(8) A mandated reporter, if the mandated reporter made the initial notification of suspected child maltreatment and the notification has been accepted for investigation.

History. Acts 2009, No. 749, § 1; 2011, No. 1143, § 9.

Amendments. The 2011 amendment substituted "offender" for "aggressor" in (6); substituted "responsible" for "appropriate" in (7); and added (8).

Subchapter 6 — Investigative Proceedings

12-18-601. Assignment to investigative agency.

(a) When a person, agency, corporation, or partnership then providing substitute care for any child in the custody of the Department of Human Services or a Department of Human Services employee or employee's spouse or other person residing in the home is reported as being suspected of child maltreatment, the investigation shall be conducted pursuant to procedures established by the Department of Human Services.

(b) The procedures described in subsection (a) of this section shall include referral of allegations to the Department of Arkansas State Police and any other appropriate law enforcement agency if the allegation involves severe maltreatment.

(c) Upon referral, the Department of Arkansas State Police shall investigate the allegations.

(d)(1) The Department of Human Services may develop and implement triage procedures for accepting and documenting reports of child maltreatment of a child not at risk of imminent harm if an appropriate referral is made to a community organization or voluntary preventive service.

(2) The Department of Human Services shall not implement this section until rules necessary to carry out this subsection have been promulgated pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 2009, No. 749, § 1; 2011, No. 1143, § 10.

Amendments. The 2011 amendment substituted "accepting and documenting" for "screening out" in (d)(1).

12-18-602. Initiation of the investigation.

(a)(1) The Department of Human Services shall cause an investigation to be made upon receiving initial notification of suspected child maltreatment.

(b)(1) All investigations shall begin within seventy-two (72) hours.

(2) However, the investigation shall begin within twenty-four (24) hours if:

(A) The allegation is severe maltreatment, excluding an allegation of sexual abuse if the most recent allegation of sexual abuse was more than one (1) year ago or the alleged victim does not currently have contact with the alleged offender; or

(B) The allegation is that a child has been subjected to neglect as defined in § 12-18-103(13)(B).

(c) At the initial time of contact with the alleged offender, the person conducting the investigation shall advise the alleged offender of the allegations made against the alleged offender in a manner that is consistent with the laws protecting the rights of the person who made the report.

(d) Upon initiation of the investigation, the primary focus of the investigation shall be whether or not the alleged offender has access to children and whether or not children are at risk such that children need to be protected.

History. Acts 2009, No. 749, § 1; 2011, No. 1143, § 11.

Amendments. The 2011 amendment substituted "more than one (1) year ago or" for "more than one (1) year ago and" in (b)(2)(A).

12-18-610. Access to the child's school records.

(a) A person conducting an investigation under this chapter shall be allowed access to the child's public and private school records during the course of the child maltreatment investigation.

(b) Upon request, a public or private school shall provide the child's records free of charge to the person conducting the investigation.

History. Acts 2009, No. 749, § 1; 2011, No. 1143, § 12.

Amendments. The 2011 amendment added (b).

12-18-620. Release of information on pending investigation.

(a) Information on a pending investigation under this chapter is confidential and may be disclosed only as provided in this chapter.

(b)(1) The Department of Human Services shall not release data that would identify a person who made a report under this chapter unless a court of competent jurisdiction orders release of the information after the court has reviewed in camera the record related to the report and has found it has reason to believe that the reporter knowingly made a false report.

(2) However, upon request, the information shall be disclosed to the prosecuting attorney or law enforcement.

(c)(1) Any person or agency to whom disclosure is made shall not disclose to any other person any information obtained pursuant to this section.

(2) However, the person or agency is permitted to consult his or her or its own attorney regarding the information in any notice provided by the department.

(d) The department may provide information, including protected health information, to a person or agency that provides services such as medical examination of, an assessment interview with, or diagnosis of, care for, treatment of, or supervision of a victim of maltreatment, a juvenile offender, or an underaged juvenile aggressor.

(e) Information on a pending investigation, including protected health information, shall be released upon request to:

(1) The Department of Human Services;

(2) Law enforcement;

(3) The prosecuting attorney;

(4) The responsible multidisciplinary team;

(5) Attorney ad litem of the alleged victim or offender;

(6) Court Appointed Special Advocate of the alleged victim or offender;

(7) Any licensing or registering authority to the extent necessary to carry out its official responsibilities;

(8) Any department division director or facility director receiving notice of a Child Abuse Hotline report pursuant to this chapter;

(9) Any facility director receiving notice of a Child Abuse Hotline report pursuant to this chapter; and

(10)(A) Acting in their official capacities, individual United States and Arkansas senators and representatives and their authorized staff members but only if they agree not to permit any redisclosure of the information.

(B) However, disclosure shall not be made to any committee or legislative body.

(f) Information on a pending investigation, including protected health information, may be released to or disclosed in a circuit court child custody case or similar case if:

(1) No seventy-two-hour hold has been exercised under this chapter or pleadings filed pursuant to the Arkansas Juvenile Code of 1989, § 9-27-301 et seq.;

(2) Written notice of intent to request release or disclosure is provided to the investigating agency at least five (5) days before the date for release or disclosure;

(3) The investigating agency has the opportunity to appear before the court and be heard on the issue of release or disclosure;

(4) The information gathered by the investigative agency is necessary for the determination of an issue before the court;

(5) Waiting until completion of the investigation will jeopardize the health or safety of the child in the custody case;

(6) A protective order is issued to prevent redisclosure of the information provided by the investigating agency or the information is released or disclosed only to the court in camera; and

(7) Release or disclosure of the information will not compromise a criminal investigation.

(g) Information on a pending investigation, including protected health information, may be released to or disclosed in the circuit court if the victim or alleged offender has an open dependency-neglect or family in need of services case before the circuit court.

History. Acts 2009, No. 749, § 1; 2011, No. 1143, § 13.

Amendments. The 2011 amendment substituted "responsible" for "appropriate" in (e)(4).

Subchapter 7 — Investigative Findings

12-18-702. Investigative determination.

Upon completion of an investigation under this chapter, the Department of Human Services shall determine whether the allegations of child maltreatment are:

(1)(A) Unsubstantiated.

(B) An unsubstantiated determination shall be entered when the allegation is not supported by a preponderance of the evidence;

(2)(A) True.

(B) A true determination shall be entered when the allegation is supported by a preponderance of the evidence.

(C) A determination of true but exempted, which means that the offender's name shall not be placed in the Child Maltreatment Central Registry, shall be entered if:

(i) A parent practicing his or her religious beliefs does not, for that reason alone, provide medical treatment for a child, but in lieu of treatment the child is being furnished with treatment by spiritual means alone, through prayer, in accordance with a recognized religious method of healing by an accredited practitioner;

(ii) The offender is an underaged juvenile offender;

(iii) The report was true for neglect as defined under § 12-18-103(13)(B); or

(iv) The report was true for sexual abuse by an offender at least thirteen (13) years of age and less than sixteen (16) years of age and the offender has not been adjudicated delinquent or has not pleaded guilty, nolo contendere, or been found guilty of an offense on the same set of facts as contained in the report; or

(3)(A) Inactive.

(B) If the investigation cannot be completed, the investigation shall be determined incomplete and placed in inactive status.

History. Acts 2009, No. 749, § 1; 2011, No. 1143, § 14.

Amendments. The 2011 amendment substituted "offender" for "aggressor" in (2)(C)(ii); and inserted (2)(C)(iv).

12-18-703. Notice generally.

(a) The Department of Human Services shall notify each alleged offender of the child maltreatment investigative determination whether true or unsubstantiated.

(b)(1) In every case in which a report is determined to be true, the department shall notify the alleged offender of the investigative determination by certified mail, restricted delivery, or process server.

(2) Failure of service under subdivision (b)(1) of this section is not deemed failure of notice if the alleged offender has actual notice.

History. Acts 2009, No. 749, § 1; 2011, No. 1143, § 15.

Amendments. The 2011 amendment added (b)(2).

12-18-704. Notice if the investigative determination is true but exempted and the alleged offender is a child.

If the investigative determination of the report was determined true but exempted under § 12-18-702(2)(C)(ii) or § 12-18-702(2)(C)(iv), and the alleged offender is a child at the time the act or omission occurred, the Department of Human Services shall notify the legal parents and legal guardians of the investigative determination and that the child's name shall not be placed in the Child Maltreatment Central Registry.

History. Acts 2009, No. 749, § 1; 2011, No. 1143, § 15.

Amendments. The 2011 amendment inserted "investigative determination of the" and "but exempted under § 12-18-702(2)(C)(ii) or § 12-18-702(2)(C)(iv)" and deleted "under ten (10) years of age" following "is a child."

12-18-705. Notice if the alleged offender is under eighteen years of age.

(a) If the report was determined true and the alleged offender is under eighteen (18) years of age at the time the act or omission occurred a notice shall be given as provided in this section.

(b) The notice under this section shall be provided as follows:

(1) If the alleged offender is in foster care, the Department of Human Services shall notify the alleged offender's counsel and the legal parents, legal guardians, and current foster parents of the alleged offender; or

(2) If the alleged offender is not in foster care, the department shall notify the legal parents and legal guardians of the alleged offender.

(c) The notice under this section shall include the following:

(1) The investigative determination, excluding data that would identify the person who made the report to the Child Abuse Hotline;

(2) A statement that the matter has been referred for an automatic administrative hearing that may be waived only by the alleged offender or his or her parent or legal guardian in writing;

(3) The potential consequences to the alleged offender if the alleged offender's name is placed in the Child Maltreatment Central Registry;

(4) A statement that the alleged offender has a right to have an attorney and if the person cannot afford an attorney to contact Legal Services;

(5) A statement that if the alleged offender's name is placed on the registry, the alleged offender's name may be automatically removed after one (1) year or the alleged offender may be able to petition for removal after one (1) year, depending on the finding;

(6) A statement that the administrative hearing may take place in person if requested by the alleged offender, the alleged offender's parent or guardian, or the alleged offender's attorney within thirty (30) days from the date that the alleged offender receives notification under this section; and

(7) The name of the person making the notification, his or her title or position, and current contact information.

History. Acts 2009, No. 749, § 1; 2011, No. 1143, § 15.

Amendments. The 2011 amendment substituted "under eighteen (18) years of age" for "a child ten (10) years of age or older" in (a); substituted "alleged offender" for "child" or variant throughout (b)(1) and (b)(2); substituted "alleged offender" for "juvenile offender" or "alleged juvenile offender" or variant throughout (c)(2), (c)(3), and (c)(6); substituted "alleged offender" for "person" or variant throughout (c)(4) and c)(5); and deleted "to the alleged juvenile offender" following "notification" in (b)(7).

12-18-706. Notice if the alleged offender is eighteen years of age or older.

Notification to an alleged offender who was eighteen (18) years of age or older at the time of the act or omission that resulted in a true finding of child maltreatment shall include the following:

(1) The investigative determination, excluding data that would identify the person who made the report to the Child Abuse Hotline;

(2) A statement that the person named as the alleged offender of the true report may request an administrative hearing;

(3) A statement that the request must be made to the Department of Human Services within thirty (30) days of receipt of the service or certified mailing of the notice of determination;

(4) The potential consequences to the person if the person's name is placed on the Child Maltreatment Central Registry;

(5) A statement that the person has a right to have an attorney and that if the person cannot afford an attorney to contact Legal Services;

(6) A statement that if the person's name is placed on the registry, the person's name may be automatically removed after one (1) year or the person may be able to petition for removal after one (1) year, depending on the finding;

(7) The name of the person making the notification to the alleged offender, his or her title or position, and current contact information; and

(8) A statement that the administrative hearing may take place in person if requested by the alleged offender or the alleged offender's attorney within thirty (30) days from the date that the alleged offender receives notification under this section.

History. Acts 2009, No. 749, § 1; 2011, No. 779, § 19.

Amendments. The 2011 amendment deleted "juvenile" preceding "offender" in (7).

12-18-708. Miscellaneous notice requirements.

(a) The Department of Human Services shall confirm an investigative determination upon request from the following:

(1) The responsible multidisciplinary team;

(2) The juvenile division of circuit court if the victim or offender has an open dependency-neglect or family in need of services case;

(3) The attorney ad litem for any child who is named as the victim or offender;

(4) The court-appointed special advocate for any child named as the alleged victim or offender;

(5) Any licensing or registering authority to the extent necessary to carry out its official responsibilities;

(6) Any department division director or facility director receiving notice of a Child Abuse Hotline report under this chapter;

(7) Any facility director receiving notice of a Child Abuse Hotline report under this chapter;

(8) The attorney ad litem and court-appointed special advocate volunteer of all other children in the same foster home if the child maltreatment occurred in a foster home; and

(9) The attorney ad litem and court-appointed special advocate volunteer for any child in foster care when the alleged juvenile offender or underaged juvenile offender is placed in the same placement as the attorney ad litem or court-appointed special advocate's client.

(b) If the investigative determination is true, notification of the investigative determination shall be provided to the school where the victim child is enrolled. However, the name of the alleged offender shall not be identified.

(c) The department may notify the persons or entities listed in subsection (a) of this section of the investigative determination, if the department determines the notification is necessary to ensure the health or safety of the child.

History. Acts 2009, No. 749, § 1; 2011, No. 1143, § 16.

Amendments. The 2011 amendment, in the introductory language of (a), substituted "The Department of Human Services shall confirm" for "Notification of" and "upon request from the following" for "shall be provided to"; substituted "responsible" for "appropriate" in (a)(1); substituted "juvenile division of circuit court" for "circuit court judge" in (a)(2); rewrote (c)(8) and (c)(9); deleted former (b) and redesignated the following subsection accordingly; and added (c).

12-18-709. Confidentiality.

(a) Notice of an investigative determination under this chapter is confidential and may be disclosed only as provided in this chapter.

(b)(1) The Department of Human Services shall not release data that would identify the person who made the report unless a court of competent jurisdiction orders release of the information after the court has reviewed, in camera, the record related to the report and has found it has reason to believe that the reporter knowingly made a false report.

(2) However, upon request, the information shall be disclosed to the prosecuting attorney or law enforcement.

(c)(1) Any person or agency to whom disclosure is made shall not disclose to any other person a report or other information obtained pursuant to this section.

(2) However, the person or agency is permitted to consult his or her or its own attorney regarding the information in any notice provided by the department.

(d)(1) Notification of the investigative determination of severe maltreatment shall be provided to the appropriate law enforcement agency and the prosecuting attorney.

(2) The prosecuting attorney and law enforcement may provide written notice to the department that the department does not need to provide notice of investigative determinations.

(3) Upon receiving the notification, the department shall not be required to provide notification of the investigative determination.

(e) The department shall notify each subject of the report of the investigative determination whether true or unsubstantiated.

(f) The department shall notify the alleged offender's legal parents, legal guardians, and foster parents of the investigative determination if the:

(1) Investigative determination is unsubstantiated; and

(2) Alleged offender is:

(A) Under eighteen (18) years of age; and

(B) In foster care.

History. Acts 2009, No. 749, § 1; 2011, No. 1143, § 17.

Amendments. The 2011 amendment added (f).

12-18-710. Release of information on true investigative determination pending due process.

(a) Information on a completed true investigation pending due process as referenced in this chapter is confidential and may be disclosed only as provided in this chapter.

(b)(1) The Department of Human Services shall not release data that would identify the person who made the report unless a court of competent jurisdiction orders release of the information after the court has reviewed in camera the record related to the report and has found it has reason to believe that the reporter knowingly made a false report.

(2) However, upon request, the information shall be disclosed to the prosecuting attorney or law enforcement.

(c)(1) Any person or agency to whom disclosure is made shall not disclose to any other person any information obtained pursuant to this section.

(2) However, the person or agency is permitted to consult his or her or its own attorney regarding the information in any notice provided by the department.

(d) The department may provide information, including protected health information, to a person or agency that provides services such as medical examination of, an assessment interview with, or diagnosis of, care for, treatment of, or supervision of a victim of maltreatment, a juvenile offender, or an underaged juvenile offender.

(e) Information on a completed investigation, including protected health information, pending due process shall be released upon request to:

(1) The alleged offender;

(2) The department;

(3) Law enforcement;

(4) The prosecuting attorney;

(5) The responsible multidisciplinary team;

(6) Attorney ad litem for the victim or offender;

(7) Court-appointed special advocate for the victim or offender;

(8) Any licensing or registering authority to the extent necessary to carry out its official responsibilities;

(9) Any department division director or facility director receiving notice of a Child Abuse Hotline report under this chapter;

(10) Any facility director receiving notice of a Child Abuse Hotline report under this chapter; and

(11)(A) Acting in their official capacities, individual United States and Arkansas senators and representatives and their authorized staff members but only if they agree not to permit any redisclosure of the information.

(B) However, disclosure shall not be made to any committee or legislative body.

(f) Information on a true investigative determination, including protected health information, may be released to or disclosed in a circuit court child custody case or similar case if:

(1) No seventy-two-hour hold has been exercised under this chapter or pleadings filed pursuant to the Arkansas Juvenile Code of 1989, § 9-27-301 et seq.;

(2) Written notice of intent to request release or disclosure is provided to the investigating agency at least five (5) days before the date for release or disclosure;

(3) The investigating agency has the opportunity to appear before the court and be heard on the issue of release or disclosure;

(4) The information gathered by the investigative agency is necessary for the determination of an issue before the court;

(5) Waiting until completion of due process will jeopardize the health or safety of the child in the custody case;

(6) A protective order is issued to prevent redisclosure of the information provided by the investigating agency or the information is released or disclosed only to the court in camera; and

(7) Release or disclosure of the information will not compromise a criminal investigation.

(g) Information on a true investigative determination, including protected health information, may be released to or disclosed in the circuit court if the victim or offender has an open dependency-neglect or family in need of services case before the circuit court.

History. Acts 2009, No. 749, § 1; 2011, No. 1143, § 18.

Amendments. The 2011 amendment substituted "underaged juvenile offender" for "underaged juvenile aggressor" in (d); and substituted "responsible" for "appropriate" in (e)(5).

Subchapter 8 — Administrative Hearings

12-18-801. Time to complete administrative hearing.

(a)(1)(A) The administrative hearing process under this chapter must be completed within one hundred eighty (180) days from the date of the receipt of the request for a hearing, or the administrative law judge shall enter an order overturning the investigative agency's investigative determination of true.

(B) However, delays in completing the administrative hearing that are attributable to either party shall not count against the limit of one hundred eighty (180) days if the administrative law judge determines that good cause for the delay is shown by the party requesting the delay and the request for delay is made in writing and delivered to the Office of Appeals and Hearings of the Department of Human Services and all other parties.

(2)(A) If an order is entered overturning the investigating agency's investigative determination of true because of the failure to complete the administrative hearing process within one hundred eighty (180) days, the Department of Human Services shall report any failures to comply with this subsection for each quarter to the House Committee on Aging, Children and Youth, Legislative and Military Affairs and the Senate Interim Committee on Children and Youth.

(B) The quarterly report to the House Committee on Aging, Children and Youth, Legislative and Military Affairs and the Senate Interim Committee on Children and Youth shall include a written explanation of the failure of the department.

(b)(1) The limit of one hundred eighty (180) days for an administrative hearing under this chapter shall not apply if there is an ongoing criminal or delinquency investigation or criminal or delinquency charges have been filed or will be filed regarding the occurrence that is the subject of the child maltreatment report.

(2) In a case described under subdivision (b)(1) of this section, the administrative hearing shall be stayed pending final disposition of the criminal or delinquency proceedings.

(3) It shall be the duty of the petitioner to report the final disposition of the criminal or delinquency proceeding to the department.

(4) Each report shall include a file-marked copy of the criminal or delinquency disposition.

(5) The request for an administrative hearing shall be deemed waived if the petitioner fails to report the disposition of the criminal or delinquency proceedings within thirty (30) days of the entry of a dispositive judgment or order.

(6) If the criminal or delinquency proceedings have not reached a final outcome within twelve (12) months of the filing of the request for administrative hearing, the administrative appeal will be deemed waived if the petitioner fails to provide a written statement of the status of the criminal or delinquency proceedings every sixty (60) days and a disposition report within thirty (30) days of the entry of a dispositive judgment or order.

History. Acts 2009, No. 749, § 1; 2011, No. 1143, § 19.

Amendments. The 2011 amendment, in (a)(1)(B), substituted "either party" for "the petitioner" and added "if the administrative law judge ... and all other parties."

12-18-802. Subpoenas — Service upon a child.

If any child served with a subpoena to be a witness in an administrative hearing is a party to an open dependency-neglect or family in need of services case, the child's attorney ad litem shall be provided a copy of the subpoena.

History. Acts 2009, No. 749, § 1; 2011, No. 1139, § 2.

Amendments. The 2011 amendment rewrote the section.

12-18-804. Defenses and affirmative defenses.

For any act or omission of child maltreatment that would be a criminal offense or an act of delinquency, any defense or affirmative defense, including the burden of proof regarding the affirmative defense, that would apply to the criminal offense or delinquent act is also cognizable in a child maltreatment proceeding with the exception of:

(1) A statute of limitation;

(2) Lack of capacity as a result of mental disease or defect under § 5-2-312; and

(3) Affirmative defenses under §§ 5-1-112 — 5-1-114.

History. Acts 2009, No. 749, § 1; 2011, No. 1143, § 20.

Amendments. The 2011 amendment, in the introductory language, inserted "including the burden of proof regarding the affirmative defense" and added "with the exception of" at the end; and added (1) through (3).

12-18-809. Confidentiality.

(a) An administrative hearing decision and the hearing record, including all exhibits, under this chapter are confidential and shall remain confidential upon the filing of an appeal with a circuit court or an appellate court.

(b) An administrative hearing decision and the hearing record, including all exhibits, under this chapter that uphold the agency investigative determination of true may be used or disclosed only as provided in this chapter.

(c) An administrative hearing decision and the hearing record, including all exhibits, under this chapter that overturn the agency investigative determination of true may be used or disclosed only as provided in this chapter.

History. Acts 2009, No. 749, § 1; 2011, No. 1143, § 21.

Amendments. The 2011 amendment inserted "and the hearing record, including all exhibits" in (a), (b), and (c); and deleted "and all exhibits submitted at the hearing" following "under this chapter" in (a).

12-18-813. Notice of investigative determination upon satisfaction of due process.

(a)(1) Due process has been satisfied when:

(A) The alleged offender eighteen (18) years of age or older at the time the act or omission occurred was provided written notice of the true investigative determination as required by this chapter but failed to timely request an administrative hearing;

(B) The alleged offender eighteen (18) years of age or older at the time the act or omission occurred timely requested an administrative hearing and a decision has been issued by the administrative law judge; or

(C) The alleged offender was a child at the time the act or omission occurred and the child or his or her legal parent or legal guardian waived the administrative hearing or the administrative law judge issued a decision.

(2) Upon satisfaction of due process, if the investigative determination is true, the alleged offender's name shall be placed in the Child Maltreatment Central Registry.

(b)(1) Upon satisfaction of due process and if the investigative determination is true, the Department of Human Services shall provide the local educational agency, specifically the school counselor at the school the maltreated child attends, a report including the name and relationship of the offender to the maltreated child and the services offered or provided by the department to the child.

(2) Upon completion of due process, the department shall provide the local educational agency, specifically the school counselor at the school the maltreated child attends, a report indicating the department's true investigative determination on any child ten (10) years of age or older who is named as the offender in a true report and the services offered or provided by the department to the juvenile offender.

(3) Any local educational agency receiving information under this section from the department shall make this information, if it is a true report, confidential and a part of the child's permanent educational record and shall treat information under this section as educational records are treated under the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g.

(c)(1) Upon satisfaction of due process and if the investigative determination is true, if the offender is engaged in child-related activities or employment and the department has determined that children under the care of the offender appear to be at risk of maltreatment by the offender, the department may notify the following of the investigative determination:

(A) The offender's employer;

(B) A school superintendent, principal, or a person in an equivalent position where the offender is employed;

(C) A person in charge of a paid or volunteer activity; and

(D) Any licensing or registering authority to the extent necessary to carry out its official responsibilities.

(2) The department shall promulgate rules that shall ensure that notification required under this subsection is specifically approved by a responsible manager in the department before the notification is made.

(3) If the department later determines that there is not a preponderance of the evidence indicating that children under the care of the alleged offender appear to be at risk, the department shall immediately notify the previously notified person or entity of that information.

(d) Upon satisfaction of due process, if the victim or offender is in foster care, notification of the investigative determination shall be provided to:

(1) The legal parents, legal guardians, and current foster parents of the victim; and

(2) The attorney ad litem and court-appointed special advocate volunteer for the victim or offender.

(e) Upon satisfaction of due process, notification of the investigative determination shall be provided to the following:

(1) All subjects of the report; and

(2) As required by § 21-15-110, the employer of any offender if the offender is in a designated position with a state agency.

(f) Upon satisfaction of due process, the department shall confirm the investigative determination to the following, upon request:

(1) The responsible multidisciplinary team;

(2) The juvenile division of circuit court, if the victim or offender has an open dependency-neglect or family in need of services case;

(3) The attorney ad litem for a child who is named as the victim or offender;

(4) The court-appointed special advocate volunteer for a child named as the alleged victim or offender;

(5) Any licensing or registering authority if it is necessary to carry out its official responsibilities;

(6) Any department division director or facility director receiving notice of a Child Abuse Hotline report under this subchapter;

(7) The attorney ad litem and court-appointed special advocate volunteer of all other children in the same foster home if the child maltreatment occurred in a foster home;

(8) The attorney ad litem and court-appointed special advocate volunteer for any child in foster care when the alleged offender or underaged juvenile offender is placed in the same placement as the attorney ad litem or court-appointed special advocate volunteer's client;

(9) A child safety center if involved in the investigation;

(10) Law enforcement; and

(11) The prosecuting attorney in cases of severe maltreatment.

(g) Upon satisfaction of due process, the department may notify the persons or entities listed in subsection (f) of this section of the investigative determination if the department determines that the notification is necessary to accomplish the purposes of § 12-18-102.

History. Acts 2009, No. 749, § 1; 2011, No. 1143, § 22.

Amendments. The 2011 amendment deleted former (b) and redesignated the remaining subsections accordingly; substituted "Department of Human Services" for "department" in (c)(1); substituted "for the victim or offender" for "any other children in the same foster home if the maltreatment occurred in the foster home" in (d)(2); deleted (e)(2) through (e)(11) and redesignated the remaining subdivision as (e)(2); and added (f) and (g).

Subchapter 9 — Child Maltreatment Central Registry

12-18-901. Creation.

RESEARCH REFERENCES

ALR. Constitutional Challenges to State Child Abuse Registries. 36 A.L.R.6th 475.

12-18-909. Availability of true reports of child maltreatment from the central registry.

(a) True reports of child maltreatment are confidential and may be disclosed only as provided in this chapter.

(b)(1) The Department of Human Services may charge:

(A) A reasonable fee not to exceed ten dollars ($10.00) for researching, copying, and mailing records of the investigative files of child maltreatment cases; and

(B) A reasonable fee for reproducing copies of tapes and photographs.

(2) A fee may not be charged to:

(A) A nonprofit or volunteer agency that requests searches of the investigative files; or

(B) A person who is indigent.

(c)(1) The Department of Human Services shall not release data that would identify the person who made the report unless a court of competent jurisdiction orders release of the information after the court has reviewed in camera the record related to the report and has found it has reason to believe that the reporter knowingly made a false report.

(2) However, upon request, the information shall be disclosed to the prosecuting attorney or law enforcement.

(d)(1) Any person or agency to whom disclosure is made shall not disclose to any other person a report or other information obtained pursuant to this section.

(2) However, the person or agency is permitted to consult his or her or its own attorney regarding information provided by the department.

(3) However, a local educational agency or a school counselor shall forward all true reports of child maltreatment received from the

Department of Human Services when a child transfers from one (1) local educational agency to another and shall notify the department of the child's new school and address, if known.

(4) Nothing in this chapter shall be construed to prevent subsequent disclosure by the subject of the report.

(e)(1) The Department of Human Services may provide information, including protected health information, to a person or agency that provides services such as medical examination of, an assessment interview with, or diagnosis of, care for, treatment of, or supervision of a victim of maltreatment, a juvenile offender, or an underaged juvenile aggressor.

(2) This information may include:

(A) The investigative determination or the investigation report; and

(B) The services offered and provided.

(f) If an alleged offender's name has been provisionally placed in the Child Maltreatment Central Registry, any disclosure by the registry shall include the notation that the name has only been provisionally placed in the registry.

(g) A report made under this chapter that is determined to be true, as well as any other information obtained, including protected health information, and a report written or photograph or radiological procedure taken concerning a true report in the possession of the Department of Human Services shall be confidential and shall be made available only to:

(1) The administration of the adoption, foster care, children's and adult protective services programs, or child care licensing programs of any state;

(2) A federal, state, or local government entity, or any agent of the entity, having a need for the information in order to carry out its responsibilities under law to protect children from abuse or neglect;

(3) Any person who is the subject of a true report;

(4) A civil or administrative proceeding connected with the administration of the Arkansas Child Welfare State Plan when the court or hearing officer determines that the information is necessary for the determination of an issue before the court or agency;

(5) An audit or similar activity conducted in connection with the administration of such a plan or program by any governmental agency that may by law conduct the audit or activity;

(6)(A) A person, agency, or organization engaged in a bona fide research or evaluation project having value as determined by the Department of Human Services in future planning for programs for maltreated children or in developing policy directions.

(B) However, any confidential information provided for a research or evaluation project under this subdivision shall not be redisclosed.

(C) However, if a research or evaluation project results in the publication of related material, confidential information provided for a research or evaluation project under this subdivision shall not be disclosed;

(7) A properly constituted authority, including multidisciplinary teams referenced in this chapter, investigating a report of known or suspected child abuse or neglect or providing services to a child or family that is the subject of a report;

(8)(A) The Division of Child Care and Early Childhood Education of the Department of Human Services and the child care facility owner or operator who requested the registry information through a signed notarized release from an individual who is a volunteer, has applied for employment, is currently employed by a child care facility, or is the owner or operator of a child care facility.

(B) This disclosure shall be for the limited purpose of providing registry background information and shall indicate a true finding only;

(9) Child abuse citizen panels described in the Child Abuse Prevention and Treatment Act, 42 U.S.C. § 5106a;

(10) Child fatality review panels as authorized by the Department of Human Services;

(11)(A) A grand jury upon a finding that information in the record is necessary for the determination of an issue before the grand jury.

(B)(i) A court in a criminal case upon finding that the information in the record is necessary for the determination of an issue before the court.

(ii) The court may disclose the report to parties under the terms or a protective order issued by the court;.

(C)(i) A court in a child custody or similar civil case upon finding that the information in the record is necessary for the determination of a health or safety issue concerning a child before the court.

(ii) The court may disclose the report to the parties under the terms or a protective order issued by the court;

(12) The current foster parents of a child who is a subject of a report;

(13)(A) Acting in their official capacities, individual United States and Arkansas senators and representatives and their authorized staff members but only if they agree not to permit any redisclosure of the information.

(B) However, disclosure shall not be made to any committee or legislative body of any information that identifies any recipient of services by name or address;

(14) A Court Appointed Special Advocate upon presentation of an order of appointment for a child who is a subject of a report;

(15) The attorney ad litem of a child who is the subject of a report;

(16)(A) An employer or volunteer agency for purposes of screening an employee, applicant, or volunteer who is or will be engaged in employment or activity with children, the elderly, individuals with disabilities, or individuals with mental illness upon submission of a signed, notarized release from the employee, applicant, or volunteer.

(B) The registry shall release only the following information on true reports to the employer or agency:

(i) That the employee, applicant, or volunteer has a true report;

(ii) The date the investigation was completed; and

(iii) The type of true report;

(17) The Division of Developmental Disabilities Services and the Division of Aging and Adult Services as to participants of the waiver program;

(18) The Division of Child Care and Early Childhood Education of the Department of Human Services for purposes of enforcement of licensing laws and regulations;

(19) Any licensing or registering authority to the extent necessary to carry out its official responsibilities;

(20) Any person or entity to whom notification was provided under this chapter; and

(21) Any school superintendent, principal, or a person in an equivalent position, or the Department of Education to the extent necessary to carry out its responsibility to ensure that children are protected while in the school environment or during off-campus school activities.

History. Acts 2009, No. 749, § 1; 2011, No. 1143, § 23.

Amendments. The 2011 amendment, in (g)(11)(A), substituted "A grand Jury" for "A grand jury or court" and substituted "before the grand jury" for "before the court or grand jury"; rewrote (g)(11)(B); and added (g)(11)(C).

12-18-910. Availability of screened-out and unsubstantiated reports.

(a) Screened-out and unsubstantiated reports of child maltreatment are confidential and may be disclosed only as provided in this chapter.

(b)(1) The Department of Human Services may charge:

(A) A reasonable fee not to exceed ten dollars ($10.00) for researching, copying, and mailing records of the investigative files of child maltreatment cases; and

(B) A reasonable fee for reproducing copies of tapes and photographs.

(2) A fee shall not be charged to:

(A) A nonprofit or volunteer agency that requests searches of the investigative files; or

(B) A person who is indigent.

(c)(1) The department shall not release data that would identify the person who made the report unless a court of competent jurisdiction orders release of the information after the court has reviewed in camera the record related to the report and has found it has reason to believe that the reporter knowingly made a false report.

(2) However, upon request, the information shall be disclosed to the prosecuting attorney or law enforcement.

(d)(1) Any person or agency to whom disclosure is made shall not disclose to any other person a report or other information obtained pursuant to this section.

(2) However, the person or agency is permitted to consult his or her or its own attorney regarding information provided by the department.

(3) Nothing in this chapter shall be construed to prevent subsequent disclosure by the subject of the report.

(e) Any record of a screened-out report of child maltreatment shall not be disclosed except to the prosecuting attorney and law enforcement and may be used only within the department for purposes of administration of the program.

(f) An unsubstantiated report, including protected health information, shall be confidential and shall be disclosed only to:

(1) The prosecuting attorney;

(2) A subject of the report;

(3)(A) A grand jury upon a finding that information in the record is necessary for the determination of an issue before a grand jury.

(B)(i) A court in a criminal case upon finding that the information in the record is necessary for the determination of an issue before the court.

(ii) The court may disclose the report to parties under the terms or a protective order issued by the court.

(C)(i) A court in a child custody or similar civil case upon finding that the information in the record is necessary for the determination of a health or safety issue concerning a child before the court.

(ii) The court may disclose the report to the parties under the terms or a protective order issued by the court;

(4)(A) Acting in their official capacities, individual United States and Arkansas senators and representatives and their authorized staff members but only if they agree not to permit any redisclosure of the information.

(B) However, disclosure shall not be made to any committee or legislative body of any information that identifies any recipient of services by name or address;

(5) Law enforcement;

(6) Any licensing or registering authority to the extent necessary to carry out its official responsibilities;

(7) Adult protective services;

(8) The Division of Developmental Disabilities Services and the Division of Aging and Adult Services as to participants of the waiver program;

(9) A Court Appointed Special Advocate upon presentation of an order of appointment for a child who is a subject of a report;

(10) The attorney ad litem of a child who is the subject of a report; and

(11) Any person or entity to whom notification was provided under this chapter.

(g) Hard copy records of unsubstantiated reports shall be retained no longer than eighteen (18) months for purposes of audit.

(h) Information on unsubstantiated reports included in the automated data system shall be retained indefinitely to assist the department in assessing future risk and safety.

History. Acts 2009, No. 749, § 1; 2011, No. 1143, § 24.

Amendments. The 2011 amendment, in (f)(3)(A), substituted "A grand jury" for "A grand jury or court" and "before a grand jury" for "before the court or grand jury"; rewrote (f)(3)(B); and added (f)(3)(C).

Subchapter 10 — Protective Custody

SECTION.

12-18-1001. Protective custody generally.

(a) A police officer, law enforcement, a juvenile division of circuit court judge during juvenile proceedings concerning the child or a sibling of the child, or a designated employee of the Department of Human Services may take a child into custody or any person in charge of a hospital or similar institution or any physician treating a child may keep that child in his or her custody without the consent of the parent or the guardian, whether or not additional medical treatment is required, if:

(1) The child is subjected to neglect as defined under § 12-18-103(13)(B) and the department assesses the family and determines that the newborn and any other children, including siblings, under the custody or care of the mother are at substantial risk of serious harm such that the children need to be removed from the custody or care of the mother;

(2) The child is dependent as defined in the Arkansas Juvenile Code of 1989, § 9-27-301 et seq.; or

(3) Circumstances or conditions of the child are such that continuing in his or her place of residence or in the care and custody of the parent, guardian, custodian, or caretaker presents an immediate danger to the health or physical well-being of the child.

(b) However, custody shall not exceed seventy-two (72) hours except in the event that the expiration of seventy-two (72) hours falls on a weekend or holiday, in which case custody may be extended through the next business day following the weekend or holiday.

History. Acts 2009, No. 749, § 1; 2011, No. 1143, § 25.

Amendments. The 2011 amendment substituted "danger to the health or physical well-being of the child" for "danger of severe maltreatment" in (a)(3).

12-18-1002. Placement in a foster home.

A county sheriff or chief of police may place a child in his or her custody in a Department of Human Services foster home if:

(1) The county sheriff or chief of police contacts the on-call worker for the department and does not get a return phone call within thirty (30) minutes;

(2) The county sheriff or chief of police contacts the department Emergency Notification Line and does not get a return phone call within fifteen (15) minutes;

(3) The foster parent is personally well-known to the county sheriff or the chief of police;

(4) The county sheriff or chief of police has:

(A) Determined that the foster parent's home is safe and provides adequate accommodations for the child; and

(B) Performed a criminal record and child maltreatment check on the foster parent as required under § 9-28-409; and

(5) On the next business day, the county sheriff or chief of police immediately notifies the department of the time and date that the child was placed in the foster parent's home.

History. Acts 2009, No. 749, § 1; 2011, No. 779, § 20.

Amendments. The 2011 amendment inserted "in his or her custody" in the introductory language.

12-18-1010. When a child maltreatment investigation is determined to be true or true but exempted.

(a) If an investigation under this chapter is determined to be true or true but exempted under § 12-18-702(2)(C), the Department of Human Services may open a protective services case.

(b)(1) If the department opens a protective services case, it shall provide services to the family in an effort to prevent additional maltreatment to the child or the removal of the child from the home.

(2) The services shall be relevant to the needs of the family.

(c) If at any time during the protective services case the department determines that the child cannot safely remain at home, it shall take steps to remove the child under custody as outlined in this chapter or under the Arkansas Juvenile Code of 1989, § 9-27-301 et seq.

(d) Upon request, the department shall be provided at no cost a copy of the child's public and private school records if the department has an open protective services case.

(e) Upon request, the department shall be provided a copy of the results of radiology procedures, videotapes, photographs, or medical records on a child if the department has an open protective services case.

History. Acts 2009, No. 749, § 1; 2011, No. 1143, § 26.

Amendments. The 2011 amendment inserted "or true but exempted under § 12-18-702(2)(C)" in (a).

Subchapter 11 — Public Disclosure of Information on Fatalities and Near Fatalities

SECTION.

12-18-1108. Information not to be released in a child near fatality.

Concerning the near fatality of a child, the Department of Human Services shall not release:

(1) Information on siblings of the child;

(2) Attorney-client communications; or

(3) Any information if release of such information would jeopardize a criminal investigation.

History. Acts 2009, No. 675, § 1; 2011, No. 779, § 21.

Amendments. The 2011 amendment inserted "near" preceding "fatality" in the introductory language.

SUBTITLE 3. CORRECTIONAL FACILITIES AND PROGRAMS

CHAPTER 27

DEPARTMENT OF CORRECTION — DEPARTMENT OF COMMUNITY CORRECTION

12-27-103. Department of Correction — Creation — Powers and duties.

(a) There is established, under the supervision, control, and direction of the Board of Corrections, a Department of Correction.

(b) The Department of Correction shall have the following functions, powers, and duties, administered in accordance with the policies, rules, and regulations promulgated by the Board of Corrections:

(1) The Department of Correction shall have exclusive jurisdiction over the care, charge, custody, control, management, administration, and supervision of all persons and offenders committed to, or in the custody of, the state penitentiary;

(2) The Department of Correction shall assume management and control over all properties, both real and personal, facilities, books, records, equipment, supplies, materials, contracts, funds, moneys, equities, and all other properties belonging to the state penitentiary, except those deemed by the Board of Corrections to be more appropriate for placement in the Department of Community Correction. The Department of Correction shall administer said properties in accordance with the provisions of this act and other laws applicable to the administration of the state correctional system;

(3) The Department of Correction shall assume all obligations, contracts, indebtedness, liabilities, and other obligations of the state penitentiary system existing on March 1, 1968;

(4)(A) The Department of Correction shall have custody, management, and control over all institutions and facilities, and the inmates therein, now belonging to the state penitentiary or hereafter established by the Department of Correction for the custodial correction and rehabilitation of persons committed to the Department of Correcton for its care, except for those institutions established by or transferred to the Department of Community Correction.

(B) Legal custody of inmates transferred to the Department of Community Correction shall remain with the Department of Correction unless altered by court order;

(5) The Department of Correction shall establish and operate classification committees, diagnosis and treatment programs, and such other programs as may be desirable to fulfill the purposes of this act;

(6) The Department of Correction shall employ such officers, employees, and agents and shall secure such offices and quarters as are deemed necessary to discharge the functions of the Department of Correction;

(7) The Department of Correction shall receive all offenders committed to the Department of Correction for conviction of felonies or other offenses, the punishment of which is commitment to the penitentiary under the laws of this state, and shall be responsible for the care, custody, and correction of such persons pursuant to policies established by the Board of Corrections;

(8) The Department of Correction shall operate all farming, livestock, industries, and other income-producing facilities of the Department of Correction and shall sell the products of its industries and farms in the manner provided by law;

(9) The Department of Correction may establish and operate regional adult detention facilities, provided funds therefor have been authorized and appropriated by the General Assembly;

(10) The Department of Correction shall cooperate with municipalities and counties in this state in providing consulting services when requested with respect to detention and correctional facilities operated by the municipalities or counties;

(11) The Department of Correction shall cooperate with law enforcement agencies of this state, the United States, institutions of this state for the detention, custody, and care of delinquent and dependent juveniles, and with all agencies and departments of this state offering services or programs of welfare, rehabilitation, and other services for the benefit of persons committed to the Department of Correction;

(12) The Department of Correction may accept gifts, grants, and funds from public and private sources with prior approval of the Board of Corrections and administer the same in furtherance of the purposes of this act;

(13)(A) The Department of Correction shall have the authority to issue warrants for the retaking of any person who, committed to its custody, unlawfully escapes therefrom.

(B) The warrant shall:

(i) Authorize all law enforcement officials of this state to take custody and return the person named therein to the custody of the Department of Correction; and

(ii) Authorize all law enforcement officials of this state, any other state, and the federal government to take custody and detain the person in any suitable detention facility while awaiting further transfer to the Department of Correction;

(14) The Department of Correction may cooperate with and contract with the federal government, governmental agencies of Arkansas and other states, political subdivisions of Arkansas, political subdivisions of other states, and private contractors to provide and improve correctional operations;

(15) The Department of Correction shall cooperate with the Department of Community Correction, the Parole Board, the Arkansas Sentencing Commission, judicial districts, municipalities, and counties in this state in providing guidance and services required to ensure a full range of correctional options for the state as a whole;

(16) The Department of Correction shall provide support to the Department of Community Correction as determined by the Board of Corrections;

(17) The Department of Correction shall assist the Board of Corrections in the furtherance of its goals by staffing the specific charges articulated for it through legislation and by the Board of Corrections; and

(18) The Department of Correction shall establish programs of research, evaluation, statistics, audit, and planning, including studies and evaluation of the performance of various functions and activities of the department and studies affecting the treatment of offenders and information about other programs.

History. Acts 1968 (1st Ex. Sess.), No. 50, § 3; 1977, No. 935, § 1; A.S.A. 1947, § 46-103; Acts 1993, No. 549, § 2; 2011, No. 184, § 1.

A.C.R.C. Notes. Acts 2011, No. 1114, § 20, provided: "JUVENILE SEX OFFENDER ASSESSMENT. The Arkansas Department of Correction is authorized to enter into a cooperative agreement with a qualified state treatment and assessment agency to conduct assessments of juvenile sex or child offenders as required by provisions of ACA 12-12-901 et. seq. and pay for services upon receipt of invoice.

"The provisions of this section shall be in effect only from July 1, 2011 through June 30, 2012."

Acts 2011, No. 1114, § 35, provided: "ESSENTIAL SERVICES STIPEND. The Arkansas Department of Correction (ADC) may award additional compensation to those exempt employees who are members of the emergency response unit. These employees are eligible to receive up to 3% per hour additional compensation for the actual number of hours that an employee spends on an emergency response action.

"The provisions of this section shall be in effect only from July 1, 2011 through June 30, 2012."

Amendments. The 2011 amendment inserted "political subdivisions of other states" in (b)(14).

12-27-114. Inmates in county jails — Reimbursement of county — Medical care.

A.C.R.C. Notes. Acts 2011, No. 1114, § 15, provided: "COUNTY 3 REIMBURSEMENT RATE RESTRICTION. Notwithstanding any other provision of law or departmental commitment which may exist to the contrary, the Board of Corrections shall not increase any reimbursement rate for payments made to any county for the purpose of reimbursing the expenses of the care and custody of state inmates, without first seeking and receiving the approval of the Governor and the Chief Fiscal Officer of the State.

"The provisions of this section shall be in effect only from July 1, 2011 through June 30, 2012."

Acts 2011, No. 1114, § 16, provided: "COUNTY JAIL REIMBURSEMENT. In the event the Department of Correction cannot accept inmates from county jails due to insufficient bed space, the Department shall reimburse the counties at a rate determined by the Chief Fiscal Officer of the State, after consultation with the Division of Legislative Audit and the Department of Correction, and upon approval by the Governor, until the appropriation and funding for such purpose, is exhausted. The reimbursement rate shall include the county's cost of transporting the inmates to the department. The appropriation provided by Item (06) of Section 3 may be used for contracts with county jails for pre release inmates.

"The provisions of this section shall be in effect only from July 1, 2011 through June 30, 2012."

Acts 2011, No. 1114, § 31, provided: "COUNTY JAIL INVOICE SUMMARY. The Departments of Correction and Community Correction, shall at a minimum and on a fiscal year basis, prepare and post on the applicable agency web site, a monthly summary of county jail reimbursement invoices prepared and forwarded to each county sheriff for verification by the Departments and for payment from the County Jail Reimbursement Fund. In addition, the report shall include a summary of invoices returned by each county for payment for previous months within the fiscal year, the amounts paid, and any balances owed. Each fiscal year-end report shall be maintained on the web sites for a period of no less than three (3) years."

Acts 2011, No. 1105, § 20, provided: "COUNTY JAIL INVOICE SUMMARY. The Departments of Correction and Community Correction, shall at a minimum and on a fiscal year basis, prepare and post on the applicable agency web site, a monthly summary of county jail reimbursement invoices prepared and forwarded to each county sheriff for verification by the Departments and for payment from the County Jail Reimbursement Fund. In addition, the report shall include a summary of invoices returned by each county for payment for previous months within the fiscal year, the amounts paid, and any balances owed. Each fiscal year-end report shall be maintained on the web sites for a period of no less than three (3) years."

12-27-116. Use of fuel and provisions — Issuance or sale of items produced.

(a) Except as authorized by the Board of Corrections, no officer of the Department of Correction or employee of the department shall give to anyone any fuel, forage, provisions, or manufactured articles under his or her charge, nor permit such things to be taken or used except for the use and benefit of the state.

(b)(1) The department may provide a program to provide for the orderly and equitable issuance or sale of surplus items produced or processed by the farming operations of the department to employees and, if the department provides the program, the department shall implement a monitoring system to guarantee fiscal accountability in the program.

(2) Only those individuals identified as emergency force personnel meeting the following requirements may participate in the issuance of items under this program:

(A) Individuals whose duties require long working hours beyond the normal workday of approximately 8:00 a.m. to 5:00 p.m., and the normal workweek of five (5) days a week;

(B) Individuals required for long working hours, regularly worked weekends, and holidays; or

(C) Individuals on twenty-four-hour call, seven (7) days a week.

(3) As determined by availability after meeting the needs of the inmate population, reasonable quantities of items produced or processed by the farming operations of the department or purchased in bulk for processing shall be made available under this section.

(4) There shall be a twenty-five dollar ($25.00) per month minimum allowance for commissary items.

(5)(A) Fresh surplus vegetables will be available at the cost of production as determined by the Department of Correction's Farm Accounting Division and Central Office Accounting Division to all nonemergency force employees.

(B) Vegetables will be for the use of the employee and domicile correction's family only.

(C) Only one (1) member of the domicile family will be entitled to the issuance or purchase of vegetables.

(6) The department will implement, maintain, and guarantee accountability of all items so issued to assure fiscal responsibility and total honesty in the program.

History. Acts 1893, No. 76, § 54, p. 121; C. & M. Dig., § 9723; Pope's Dig., § 12754; Acts 1981, No. 139, § 1; A.S.A. 1947, § 46-129; Acts 1989 (1st Ex. Sess.), No. 118, § 33; 2009, No. 283, § 1; 2011, No. 182, § 1; 2011, No. 779, § 22.

Amendments. The 2011 amendment by No. 182, in (b)(1), substituted "shall adopt rules and regulations to establish" for "may provide" and substituted "if the department provides the program, the department" for "in addition."

The 2011 amendment by No. 779 added "shall be made available under this section" at the end of (b)(3).

12-27-125. Department of Community Correction — Creation — Powers and duties.

A.C.R.C. Notes. Acts 2011, No. 570, § 2, provided: "Establishment of a study.

"(a)(1) The Department of Community Correction shall conduct or commission a thorough examination of the financial obligations incurred by offenders in the Arkansas criminal justice system and the manner in which these obligations are imposed and collected.

"(2) The Department of Community Correction will:

"(A) Both:

"(i) Examine state and local laws and policies pertaining to the ordering, collection, and distribution of court-ordered restitution, fees and other charges in misdemeanor and felony criminal cases; and

"(ii) Review individual cases and practices.

"(B) In examining the data collected under subdivision (a)(2) of this section, the report shall include:

"(i) The types of criminal convictions for which restitution is ordered;

"(ii) How frequently restitution orders are issued;

"(iii) The rate at which the restitution is paid;

"(iv) The methods used by law enforcement and by the courts to ensure the restitution is paid;

"(v) The existence of any collection gap between what is ordered and what is actually paid;

"(vi) The impact of child support obligations on the overall financial obligations of the offender and the relationship and relevance of child support to other financial obligations on the offender; and

"(vii) How each court prioritizes the collection of the various financial obligations of offenders;

"(C) Examine by judicial district the data collected under this section; and

"(D) Investigate other issues that the Department of Community Correction finds relevant to the issues identified in this section.

"(b) The data, findings, and conclusions of the study shall be submitted in a report due December 31, 2012, to the House Judiciary Committee, the Senate Judiciary Committee, the Administrative Office of the Courts, and the Governor and shall include recommendations to improve the system to ensure proper payment and justice for the victims of crime."

12-27-130. Reimbursement of county.

A.C.R.C. Notes. Acts 2011, No. 1114, § 15, provided: "COUNTY REIMBURSEMENT RATE RESTRICTION. Notwithstanding any other provision of law or departmental commitment which may exist to the contrary, the Board of Corrections shall not increase any reimbursement rate for payments made to any county for the purpose of reimbursing the expenses of the care and custody of state inmates, without first seeking and receiving the approval of the Governor and the Chief Fiscal Officer of the State.

"The provisions of this section shall be in effect only from July 1, 2011 through June 30, 2012."

12-27-136. Services and equipment.

A.C.R.C. Notes. Acts 2011, No. 920, § 3, provided: "ASSISTANCE PROVISION. The Department of Correction and the Department of Community Correction may provide services, furnishings, equipment and office space to assist the Parole Board in fulfilling the purposes for which the Board was created by law.

"The provisions of this section shall be in effect only from July 1, 2011 through June 30, 2012."

12-27-141. Department of Correction Annual Report.

A.C.R.C. Notes. Acts 2011, No. 1114, § 21, provided: "INMATE COST REPORTING STATE FACILITIES.

"(a) Within 90 days of the close of each state fiscal year, the Arkansas Department of Correction (ADC) shall submit to the Arkansas Legislative Council a report of all direct and indirect costs incurred by the State of Arkansas in housing and caring for inmates incarcerated in the State's facilities. Such costs shall be calculated and reported in total for the Department and in total by each facility. The report shall also reflect overall cost per inmate per day, cost per inmate per day for each facility, overall cost per bed per day, and cost per bed per day for each facility.

"(b) In compiling costs and reporting to the Arkansas Legislative Council in accordance with subsection (a) of this section of this Act, the Department of Correction shall:

"(1) Record all expenditures in a manner that provides for the association of costs with each facility. Costs not directly attributable to a particular facility (overhead, administration, treatment, etc.) shall be allocated to each facility on the basis of inmate population.

"(2) Maintain documentation to support all elements of costs and cost reimbursement both in total and by facility;

"(3) Exclude capital outlay disbursements. However, depreciation expense for all ADC fixed assets shall be included. Depreciation expense not directly associated with the fixed assets of a particular facility shall be allocated to each facility on the basis of inmate population.

"(4) Include any interest expense incurred by ADC or another state governmental entity as a result of prison construction;

"(5) Exclude all payments to local governments for care of inmates housed in local government facilities;

"(6) Exclude all payments to local governments for Act 309 prisoners;

"(7) Include the state matching requirements associated with federal grant expenditures. Documentation shall be maintained sufficient to identify such costs by grant.

"(8) Deduct reimbursements for costs incurred. The amount of the reimbursement deducted shall be equal to or less than the cost with which the reimbursement is associated.

"(9) Include all ancillary costs. These costs shall include, but are not limited to:

"(A) ADC expenses incurred through fund transfers;

"(B) Retirement costs;

"(C) Audit costs;

"(D) ADC cost for shared employees paid by another state governmental entity;

"(E) Inmate educational and rehabilitation costs;

"(F) Inmate related expenses incurred by the Attorney General; however; expenses shall not include costs of defending Habeas Corpus cases.

"(c) In determining costs per inmate per day for reporting to the Arkansas Legislative Council in accordance with subsection (a) of this section, ADC shall:

"(1) Accumulate the number of inmates housed at each ADC facility each day throughout the state fiscal year for which costs are being reported. This accumulation shall result in total inmate days and shall be divided into total direct and indirect costs compiled in accordance with subsections (a) and (b) of this section.

"(2) Exclude those ADC inmates housed in local governmental facilities and Act 309 prisoners from the number of inmates housed at ADC facilities.

"(3) Maintain documentation supporting the number of inmates housed at ADC facilities."

12-27-143. Award of service weapon upon retirement or death.

When a Department of Correction employee retires from service with at least twenty (20) years of service or dies while still employed with the department, in recognition of and appreciation for the service of the retiring or deceased employee, the department may award the service weapon carried by the employee at the time of his or her retirement from service or death to:

(1) The employee; or

(2) The employee's spouse if the spouse is eligible under applicable state and federal laws to possess a firearm.

History. Acts 2011, No. 181, § 1.

CHAPTER 28

STATE CORRECTIONAL FACILITIES

SUBCHAPTER.

1. — General Provisions.

Subchapter 1 — General Provisions

SECTION.

12-28-107. Training for inmates.

(a) As provided for in § 12-28-101, the Department of Correction shall provide education as well as training for inmates who want to acquire skills for employment upon release.

(b)(1) The department shall identify high-demand vocations and careers and shall accordingly create training and skills programs to prepare inmates for gainful employment upon release.

(2) The programs under this section shall be available to all inmates except for inmates who disqualify themselves from participation due to disciplinary violations or because of other circumstances that may preclude the inmates' access to these programs.

(3) Programs under this section shall include without limitation training in the following fields:

(A) Professional careers and vocations;
(B) Service careers and vocations;
(C) Information and computer technology;
(D) Medical technology; and
(E) Office administration.

History. Acts 2011, No. 1151, § 3.

Subchapter 6 — Prison Overcrowding Emergency Powers Act

12-28-604. List of inmates — Early parole or discharge.

CASE NOTES

Cited: Loveless v. Agee, 2010 Ark. 53, — S.W.3d — (2010).

CHAPTER 29

INMATES OF STATE FACILITIES

SUBCHAPTER.

A.C.R.C. Notes. Acts 2011, No. 1151, § 4, provided: "Establishment of a study.

"(a) The Department of Finance and Administration or other appropriate state agency designated by the Governor shall explore the feasibility of the state's assuming responsibility for limiting liability for a business or other commercial or nonprofit enterprise that knowingly employs ex-offenders.

"(b) If the limiting of liability proves feasible and prudent, the Department of

Finance and Administration or other appropriate agency designated by the Governor shall promulgate rules and regulations for implementation of a practice allowing the limitation of liability.

"(c) Authority to determine feasibility and prudence under this section rests solely with the Department of Finance and Administration or other appropriate state agency designated by the Governor."

Subchapter 1 — General Provisions

SECTION.

12-29-105. Clergy.

(a) All clergy of every denomination shall be admitted free to a Department of Correction prison or may visit any convict confined therein, subject to such rules as may be necessary to the good government and discipline of the prison, and may administer the rites and ceremonies of the church to which the clergy belong if the convict desires it.

(b) The Director of the Department of Correction shall afford every facility to a clergy to visit a convict and to administer rites, ceremonies, and spiritual consolation to a convict within the rules of the prison.

History. Acts 1893, No. 76, § 58, p. 121; C. & M. Dig., § 9686; Pope's Dig., § 12719; A.S.A. 1947, § 46-149; Acts 2011, No. 779, § 23.

Amendments. The 2011 amendment deleted "and the physician" following "Department of Correction" in (b).

Subchapter 2 — Good Time Allowance

SECTION.

12-29-201. Meritorious good time.

(a) An inmate may be entitled to meritorious good time reducing his or her transfer eligibility date up to thirty (30) days for each month incarcerated after imposition of sentence in one (1) of the units, facilities, and centers maintained by the Department of Correction or the Department of Community Correction.

(b) An inmate transferred or paroled to the supervision of the Department of Community Correction under § 16-93-615 may receive meritorious good time reducing his or her time of transfer or parole supervision up to thirty (30) days for each month he or she is under the supervision of the Department of Community Correction.

(c) Meritorious good time shall be allocated under rules and regulations promulgated by the Board of Corrections and administered by the respective Department of Correction or Department of Community

Correction staff subject to the provisions of this subchapter for good discipline, behavior, work practices, job responsibilities, and involvement in rehabilitative activities while in the custody or under the supervision of the Department of Correction or the Department of Community Correction.

(d) Meritorious good time will not be applied to reduce the length of a sentence.

(e)(1) Meritorious good time shall apply to an inmate's transfer eligibility date from the Department of Correction or a community correction facility.

(2) Meritorious good time shall under no circumstances reduce an inmate's time served in prison by more than one-half (½) of the percentage required by law for transfer eligibility.

(3) Meritorious good time shall under no circumstances reduce an inmate's confinement in a community correction facility by more than one-half (½).

(f)(1) The Department of Correction or the Department of Community Correction shall determine a date on which the inmate who has acquired the maximum amount of meritorious good time necessary is to be administratively transferred to a less restrictive placement or supervision level within the Department of Community Correction.

(2) This date will be determined in accordance with the policies developed by the Arkansas Sentencing Commission within the parameters allowed by law.

(g)(1) Inmates under sentence of death or life imprisonment without parole shall not be eligible for meritorious good time under this subchapter but may be pardoned or have their sentences commuted by the Governor, as provided by law.

(2) Inmates sentenced to life imprisonment shall not receive meritorious good time calculated on their sentences unless the sentence is commuted to a term of years by executive clemency.

(3) Upon commutation, the inmate shall be eligible to receive meritorious good time at the rate established by this subchapter.

History. Acts 1993, No. 536, §§ 1, 2; 1993, No. 558, §§ 1, 2; 2003, No. 1005, § 1; 2011, No. 570, § 73.

A.C.R.C. Notes. Acts 2011, No. 570, § 1, provided: "Legislative intent. The intent of this act is to implement comprehensive measures designed to reduce recidivism, hold offenders accountable, and contain correction costs."

Amendments. The 2011 amendment substituted "§ 16-93-615" for "§ 16-93-206" in (b).

CASE NOTES

Prisoners' Rights Claim.

Inmate's Class 1-C classification for purposes of calculating meritorious good time under this section did not in and of itself give rise to a constitutional claim where the inmate was unable to show an atypical and substantive deprivation that was a dramatic departure from the basic conditions of his confinement. Crawford v. Cashion, 2010 Ark. 124, — S.W.3d — (2010).

12-29-202. Classification committee — Classifications.

(a)(1) There is established a classification committee to be defined by administrative regulations approved by the Board of Corrections.

(2) Members of the committee shall be selected by wardens or supervisors of the various units, facilities, or centers of the Department of Correction and Department of Community Correction per board regulation governing their selection.

(3) This committee shall meet as often as necessary to classify the inmates into no more than four (4) classes according to good behavior, good discipline, medical condition, job responsibilities, and involvement in rehabilitative activities.

(b)(1) An inmate who maintains class through good behavior, good discipline, work practices, job responsibilities, and involvement in rehabilitative activities may earn up to one (1) day for every day served as a reduction toward his or her transfer eligibility date for each day incarcerated after the imposition of sentence.

(2) An inmate who is reduced to the lowest class, established through board policy, as a result of disciplinary action shall not be entitled to earn meritorious good time.

(3) An inmate serving a punitive disciplinary sentence in punitive segregation shall not be entitled to earn meritorious good time.

(c) An inmate may be reclassified as often as the committee deems necessary or in accordance with current board regulations to carry out the purpose of this subchapter and to maintain good discipline, order, and efficiency at the units, facilities, or centers.

(d)(1) Upon recommendation of the committee, the Director of the Department of Correction may award an amount of meritorious good time sufficient to reduce incarceration time by up to ninety (90) days, not to exceed a total of three hundred sixty (360) days, for each successful completion of a:

(A) State-sponsored general education development certificate program;

(B) Vocational program for which certification is awarded;

(C) Drug or alcohol treatment program offered at a Department of Correction facility; or

(D) Pre-release and other rehabilitative programs or assignments as approved by the Board of Corrections.

(2)(A) The additional days of meritorious good time described in subdivision (d)(1) of this section shall be awarded pursuant to rules promulgated by the board.

(B) The board may make additions, amendments, changes, or alterations to the rules in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(e) Meritorious good time awarded under subdivision (d)(1) of this section shall not be applicable to persons sentenced under § 16-93-618(a)(1)(A)-(E).

(f) A jury may be instructed pursuant to § 16-97-103 regarding the awarding of meritorious good time under subdivision (d)(1) of this section.

History. Acts 1993, No. 536, § 3; 1993, No. 558, § 3; 1997, No. 876, § 1; 2005, No. 681, § 1; 2007, No. 1413, § 1; 2011, No. 570, § 74; 2011, No. 748, § 1.

A.C.R.C. Notes. Acts 2011, No. 570, § 1, provided: "Legislative intent. The intent of this act is to implement comprehensive measures designed to reduce recidivism, hold offenders accountable, and contain correction costs."

Amendments. The 2011 amendment by No. 570, in (e), deleted "In no event shall the awarding of" at the beginning, inserted "awarded" and "shall not," and substituted "16-93-618(a)(1)(A)—(E)" for "§ 16-93-611(a)(1)(A)-(E)."

The 2011 amendment by No. 748 substituted "three hundred sixty (360) days" for "two hundred seventy (270) days" in (d)(1); and added (d)(1)(D).

Subchapter 4 — Medical Care

SECTION.

12-29-402. Physical examination — Assignment to labor.

RESEARCH REFERENCES

ALR. Constitutional Right of Prisoners to Abortion Services and Facilities. 28 A.L.R.6th 485.

12-29-404. Medical parole for a terminal illness or permanent incapacitation.

(a) As used in this section:

(1) "Permanently incapacitated" means, as determined by a licensed physician, that an inmate:

(A) Has a medical condition that is not necessarily terminal but renders him or her permanently and irreversibly incapacitated; and

(B) Requires immediate and long-term care; and

(2) "Terminally ill" means, as determined by a licensed physician, that an inmate:

(A) Has an incurable condition caused by illness or disease; and

(B) Will likely die within two (2) years due to the illness or disease.

(b) The Director of the Department of Correction or the Director of the Department of Community Correction shall communicate to the Parole Board when, in the independent opinions of either a Department of Correction physician or Department of Community Correction physician and a consultant physician in Arkansas, an inmate is either terminally ill or permanently incapacitated and should be considered for transfer to parole supervision.

(c)(1) Upon receipt of a communication described in subsection (b) of this section, the board shall assemble or request all such information as is germane to determine whether the inmate is eligible under this section for immediate transfer to parole supervision.

(2) If the facts warrant and the board is satisfied that the inmate's physical condition makes the inmate no longer a threat to public safety, the board may approve the inmate for immediate transfer to parole supervision.

(d) An inmate is not eligible for parole supervision under this section if he or she is required to register as a sex offender under the Sex Offender Registration Act of 1997, § 12-12-901 et seq., and:

(1) The inmate is assessed as a Level 3 offender or higher; or

(2) A victim of one (1) or more of the inmate's sex offenses was fourteen (14) years of age or younger.

(e) The board may revoke a person's parole supervision granted under this section if the person's medical condition improves to the point that he or she would initially not have been eligible for parole supervision under this section.

History. Acts 1893, No. 76, § 35, p. 121; C. & M. Dig., § 9666; Pope's Dig., § 12706; A.S.A. 1947 § 46-152; Acts 1991, No. 771, § 1; 1995, No. 290, § 1; 2011, No. 570, § 75.

A.C.R.C. Notes. Acts 2011, No. 570, § 1, provided: "Legislative intent. The intent of this act is to implement comprehensive measures designed to reduce recidivism, hold offenders accountable, and contain correction costs."

Amendments. The 2011 amendment rewrote (a); added (b) and redesignated former (b) as (c); in (c)(1), added "Upon receipt of a communication described in subsection (b) of this section, the" at the beginning, and substituted "determine whether the inmate is eligible under this section for immediate transfer to parole supervision" for "making a decision"; in (c)(2), inserted "and the board is satisfied that the inmate's physical condition makes the inmate no longer a threat to public safety," substituted "approve" for "make," and deleted "eligible" following "inmate"; and added (d) and (e).

CHAPTER 30

STATE INMATE INDUSTRIES AND LABOR

SUBCHAPTER.

Subchapter 2 — Prison-Made Goods Act of 1967

SECTION.

12-30-205. Purchase of goods by nonprofit organizations and other individuals.

(a) A nonprofit organization may purchase goods produced by the Department of Correction's Industry Division as provided for by this subchapter upon the condition that the goods may not be resold for profit.

(b)(1) Goods produced by the division as provided for by this subchapter, excluding furniture and seating, may also be purchased by:

(A) Current employees and retirees of the Department of Correction;

(B)(i) All employees of the public offices, departments, institutions, school districts, and agencies of this state.

(ii) Subdivision (b)(1)(B)(i) of this section shall not include members of the General Assembly; and

(C) Current and former members of the Board of Corrections.

(2) Goods purchased by an individual under subdivision (b)(1) of this section shall be for personal use only and not for resale.

History. Acts 1967, No. 473, § 4; 1985, No. 825, § 1; A.S.A. 1947, § 46-237; Acts 1999, No. 1375, § 1; 2005, No. 1182, § 1; 2009, No. 502, § 1; 2011, No. 779, § 24.

Amendments. The 2011 amendment, in (b)(1)(B)(i), inserted "public" preceding "offices" and deleted "public" preceding "agencies."

Subchapter 4 — Work-Study Release

SECTION.

12-30-407. Housing of participants.

(a)(1)(A) The Board of Corrections may promulgate rules and regulations to allow the proper classification of inmates to be released to the county sheriffs of approved jail facilities or chiefs of police or other authorized law enforcement officers of city-operated approved jail facilities or community correction centers outside the Department of Correction.

(B)(i) Inmates shall be interviewed to develop a classification of each inmate's skills, work experiences, job background, and education.

(ii) Such inmates are to work at jobs that directly benefit those facilities or a political subdivision and that are related to a particular inmate's background classification and where they are to be under supervision at all times.

(2)(A)(i) County sheriffs, chiefs of police, or other authorized law enforcement officers of approved jail facilities may request assignment of inmates to their approved facilities to perform particular jobs for the facilities or for a political subdivision which are in a particular area of need of the facility or a political subdivision.

(ii) The Department of Correction shall review the requests and shall submit a list of inmates with appropriate skills or backgrounds for the particular job needs of the approved facility in accordance with the Department of Correction's classification of inmates' skills and backgrounds.

(iii) County sheriffs, chiefs of police, or other authorized law enforcement officers will choose inmates from the submitted list which are appropriate for the needs of their facilities or a political subdivision.

(B) County sheriffs, chiefs of police, or other authorized law enforcement officers shall not request the assignment of a particular inmate to their approved facility and may refuse the assignment of a particular inmate.

(3)(A) An inmate shall not be released to approved jail facilities until notification of the release is first sent to the county sheriff of the county from which the inmate was tried and convicted, the prosecuting attorney's office who convicted the inmate, and, upon a written request, to the victim or victim's family.

(B) Notification of the victim or victim's family shall be done by mail to the last known address supplied to the Department of Correction in accordance with Department of Correction policies.

(4)(A) Inmates so released shall be entitled to credit on their sentences under the meritorious classification system of the Department of Correction.

(B) However, no inmate shall be eligible to be released to the county sheriff, chief of police, or other authorized law enforcement officer of an approved jail facility unless the inmate is within thirty (30) months of his or her first parole eligibility date or his or her first post prison transfer eligibility date, unless:

(i) The inmate is returning to the county from which he or she was tried and convicted and the victim or victim's immediate family, if residing in the county from which the inmate was tried and convicted, has been notified of the inmate's return; or

(ii)*(a)* If the inmate is released to a county other than a county from which he or she was tried and convicted, the county sheriff of the county from which he or she was tried and convicted shall be notified as provided in subdivision (a)(3)(A) of this section.

(b)(1) Unless the county sheriff responds within fifteen (15) days of notification that he or she disapproves of the transfer, the inmate may be transferred as provided in this section.

(2) If the county sheriff disapproves of the transfer and an inmate becomes eligible to be released again, the notifications required by subdivision (a)(3) of this section shall be made again.

(b)(1) The number of persons on prerelease, work-release, and other rehabilitative programs that may be housed at the Arkansas Health Center shall not exceed a number appropriate to maintain the security and good order of the center.

(2) However, with the approval of the Department of Human Services State Institutional System Board and the Administrator of the Arkansas Health Center, a maximum number of persons on prerelease, work-release, and other rehabilitative programs to be housed at the center may be established by the Board of Corrections.

(c) Inmates released to the county sheriff of approved jail facilities or community correction centers pursuant to this section prior to July 28, 1995, shall remain eligible for release, notwithstanding the provisions of this section.

History. Acts 1968 (1st Ex. Sess.), No. 50, § 9; 1971, No. 465, § 1; 1977, No. 482, § 5; 1977, No. 948, § 20; 1981, No. 58, § 2; 1983, No. 309, §§ 1, 2; 1983, No. 440, § 1; 1983, No. 814, § 1; A.S.A. 1947, §§ 46-117, 46-117.2, 46-117.3; Acts 1991, No. 287, § 1; 1991, No. 1112, § 1; 1993, No. 532, § 8; 1993, No. 550, § 8; 1995, No. 1188, §§ 1, 2; 1997, No. 115, § 1; 1997, No. 936, § 1; 1997, No. 1271, § 1; 2001, No. 152, § 1; 2001, No. 1402, § 1; 2011, No. 183, § 1.

Amendments. The 2011 amendment, in (b)(1), substituted "prerelease, work-release, and other rehabilitative programs that" for "prerelease and work-release programs of the Department of Correction that" and "a number appropriate to maintain the security and good order of the center" for "two hundred twenty-five (225)"; in (b)(2), substituted "maximum number of persons on prerelease, work-release, and other rehabilitative programs to be" for "maximum of four hundred twenty-five (425) persons on prerelease and work-release programs may be" and added "may be established by the Board of Corrections" at the end.

CHAPTER 41

LOCAL CORRECTIONAL FACILITIES

SUBCHAPTER.

Subchapter 1 — General Provisions

A.C.R.C. Notes. Acts 2011, No. 1114, § 34, provided: "LOCAL GOVERNMENT INMATE COST REPORT. Each calendar year, the Association of Arkansas Counties shall compile and submit a report to the Arkansas Legislative Council, of all costs incurred, excluding construction costs, by local government units housing inmates sentenced to the Department of Correction and Department of Community Correction. The cost report shall be a representative sample of all counties housing and caring for state inmates. The report shall be submitted no later than July 1 of the calendar year immediately following the reporting year.

"The Association of Arkansas Counties in coordination with Legislative Audit shall determine which counties will be included in the sample and shall include a sufficient number of counties from each classification based upon population and each congressional district to ensure a fair representation of costs incurred. Guidelines for preparing this cost report shall be developed by the Division of Legislative Audit in coordination with the Association of Arkansas Counties. The Division of Legislative Audit shall test the accuracy of the information submitted during the routine audit of the applicable county.

"The provisions of this section shall be in effect only from July 1, 2011 through June 30, 2012."

CHAPTER 42

LABOR OF COUNTY AND CITY PRISONERS

SECTION.

12-42-101. Definition.

As used in §§ 12-42-109, 12-42-110, 12-42-112, 12-42-113, and 12-42-115, "county convicts" means persons convicted of misdemeanors or petty offenses and committed to jail in default of the payment of the fine and costs adjudged against them.

History. Acts 1877, No. 73, § 14, p. 73; C. & M. Dig., § 2059; Pope's Dig., § 2661; A.S.A. 1947, § 46-519.

Publisher's Notes. This section is being set out to correct a reference.

CHAPTER 49

INTERSTATE COMPACTS

Subchapter 1 — Interstate Corrections Compact

12-49-102. Text of Interstate Corrections Compact.

RESEARCH REFERENCES

ALR. Validity, Construction, and Application of Interstate Corrections Compact and Implementing State Laws — Jurisdictional Issues, Governing Law, and Validity and Applicability of Compact. 54 A.L.R.6th 1.